

§§ 1944.247–1944.249

will be sent through the State Office to OGC for preparation of closing instructions and any special legal documents required for closing. A certified copy of a loan resolution or the original executed witnessed loan agreement must be supplied by the applicant in time to be included in the docket. No docket will be considered which does not include the required resolution or agreement. The OGC will route the docket, including closing instructions and any legal documents, to the servicing office through the State Office.

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§§ 1944.247–1944.249 [Reserved]

§ 1944.250 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0047. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 40 hours per response, with an average of 6.4 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0575–0047), Washington, DC 20503.

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EXHIBIT A TO SUBPART E OF PART 1944— HOW TO BRING RENTAL AND COOPERATIVE HOUSING TO YOUR TOWN

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- A–10 Information to be Submitted with Application for a Rural Rental Housing (RRH) and a Rural Cooperative Housing (RCH) Loan.

I. INTRODUCTION

A. Most areas in rural America need more adequate rental housing. Some people with modest incomes live in impoverished housing that is cold in the winter and hot in the summer because adequate housing at a reasonable rent is not available. Other households that prefer to rent have the choice of either commuting many miles to work or living in the substandard rental housing that is available in small rural communities. To help reduce this rental housing shortage, the Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 finances rental housing in rural communities.

B. To augment the choice of living accommodations available to modest income persons, FmHA or its successor agency under Public Law 103–354 also provides financing for cooperative-type housing units. Although this kind of housing units is appropriate only to a particular group of persons, it also serves to help reduce the existing housing shortage in rural communities. Nonprofit organizations, other types of organizations and individuals may qualify for these housing loans. Information about the loans is available at the local FmHA or its successor agency under Public Law 103–354 office.

C. This handbook will assist interested persons and groups in applying for a rural rental or cooperative housing loan. It also briefly explains requirements regarding the construction and operation of the housing.

D. The basic guidelines in this handbook apply to all applicants; however, some procedural requirements will vary depending on the size of the project being proposed and the type of applicant/borrower. However, in no instance will different policies, practices or procedures be utilized in the evaluation or in determination of the creditworthiness of any organization or person(s) in connection with the provision of any RRH or RCH loan or other financial assistance for a project or other financial assistance which is secured by residential real estate because of race,

color, religion, sex, handicap, marital or familial status, age, or National origin.

E. The objective of the FmHA or its successor agency under Public Law 103-354 housing loan program is to provide credit for housing that serves the needs of eligible very low-, low-, and moderate-income permanent residents.

F. Successful housing depends on the existence of the following three important conditions:

1. There must be a need for the housing to be built.
2. The housing must fit the needs of prospective tenants or cooperative members from the standpoint of location, design and cost.
3. The applicant for a loan must provide adequate information to FmHA or its successor agency under Public Law 103-354 to show that these basic conditions can be met.

II. APPLYING FOR A LOAN

A. An individual, organization, or group organizing to provide housing may contact any Rural Development office processing Section 515 loan requests to obtain information and necessary forms. The Section 515 program is administered by Rural Development's Rural Housing Service (RHS).

B. Each funding cycle, RHS will publish in the FEDERAL REGISTER a notice of the availability of funds (NOFA) for Section 515 loans and a list of designated places (communities) for which loan requests may be submitted. The list of designated places is also available from any Rural Development office processing Section 515 loan requests. Designated places are rural places identified by RHS as having the greatest potential need for Section 515 housing. Except in unusual circumstances, places are designated for a period of three years or until a loan has been selected for funding, whichever occurs first.

C. Applicants must submit a loan request by the deadline announced in the FEDERAL REGISTER, and available in any Rural Development office, to be considered in the funding cycle. Section III of this exhibit provides information on the loan review and selection process. In addition, applicants are advised to read this subpart, which provides detailed information on the Section 515 program.

D. The loan request consists of SF-424.2, "Application for Federal Assistance (For Construction)," the supporting material or information listed in exhibit A-7 of this subpart, and any additional information required in NOFA. This information will enable the Agency to determine:

1. The eligibility of the applicant;
2. The feasibility (economic, environmental, and architectural) of the proposed housing;
3. That prospective cooperative members have read and understand their responsibilities as outlined in "What is Cooperative

Housing?" (available in any Rural Development office) before agreeing to a cooperative housing project;

4. Whether the proposed housing can appropriately be financed by RHS; and

5. Its Civil Rights impact.

E. This information usually can be furnished by the applicant without hiring extensive professional services. However, fees for professional packaging services rendered to a nonprofit organization can be made a part of loan development costs.

III. REVIEW OF THE LOAN REQUEST

A. Loan requests received by the deadline announced in the NOFA will be reviewed, scored, and ranked based on the loan selection criteria announced in the NOFA. Requests that rank sufficiently high will be reviewed for eligibility and feasibility.

B. Upon completion of the loan review process, applicants will be advised of RHS' decision. Applicants whose loan requests are selected for further processing will be notified of the additional steps that need to be taken. Loan requests not selected for further processing in the current funding cycle will be returned to the applicant.

IV. DEVELOPING THE LOAN DOCKET

A. When a loan request is selected for further processing, the servicing official will review the items required in exhibit A-9. The amount of information required will vary based on the complexity and size of the proposed project. The servicing official will also provide forms and guides to assist the applicant in recording required information. Some of the guides are included as exhibits in this handbook. The applicant is responsible for providing the information required. The servicing official will assemble this information and complete the docket.

B. The following information will be helpful in developing a loan docket. The first two items are applicable only to nonprofit organizations. The other items apply to any applicant. In addition, the requirements of exhibit A-7 of this subpart must be met when developing a loan request and the requirements of exhibit A-9 must be met for loan requests selected for further processing.

1. *Getting organized if applicant is a nonprofit organization and has not adopted articles of incorporation and bylaws.* a. *Steering committee or sponsor.* The group may choose a steering committee or, in the case of a cooperative, a sponsor to act for it. An attorney will usually be required to advise the organization on incorporation and assist in developing the loan application. The steering committee, or sponsor, should select an attorney who is interested in the proposed housing and will render the necessary services promptly for a reasonable fee.

b. *Articles of incorporation and bylaws.* FmHA or its successor agency under Public Law 103-354 has developed model articles of incorporation and bylaws for nonprofit organizations. The steering committee, or sponsor, should arrange for the servicing official to meet with the attorney. The servicing official will give the attorney copies of the FmHA or its successor agency under Public Law 103-354 model articles of incorporation and bylaws and explain FmHA or its successor agency under Public Law 103-354 requirements. Separate bylaws have been developed for cooperatives and for rental housing organizations.

c. *Attorney's fees.* Reasonable attorney's fees may be included in the FmHA or its successor agency under Public Law 103-354 loan. A written agreement between the applicant and attorney is required. See exhibit A-1 for a sample copy of an agreement.

d. *Board of directors.* The steering committee, or sponsor, usually selects the incorporators for the corporation. The board of directors is responsible for conducting the corporation's business, including obtaining the loan and providing overall management after the housing is completed.

2. *Obtaining broadly based membership for rental housing.* a. A nonprofit corporation applying for a loan must have and maintain a broadly based local membership, including leaders in the community, representing a variety of interests in the community. The members may be individuals or organizations but each member is limited to one vote.

b. The purpose of the broadly based membership requirement is to obtain community support, provide enough members to be able to rotate officers and members of the board of directors, protect the Government's financial interest as mortgagee and provide assurance that the housing will be a success and the purpose of the loan carried out.

c. In RRH loans made to nonprofit organizations and public bodies, there is no profit incentive. The term of the loan may be for as long as 30 years, with an amortization period not to exceed 50 years. Therefore, factors such as the prospect for continuous competent management and supervision, maintenance and adequate community support for the housing project over the expected life of the loan are important.

d. A membership list showing the names and addresses of each member should be maintained by the secretary of the organization.

(1) *Number of members required.* The organization should have at least 25 members. The number of members may be decreased for projects with less than 25 units.

(2) *Contributions by members.* Nonprofit corporations may require a membership fee or ask prospective members for a contribution. This is the method often used by nonprofit

corporation applicants to raise initial operating capital. However, no such fee or contribution can entitle a member or prospective member to a preference in occupancy of the housing.

3. *Cooperative membership.* a. Only those persons who will reside in the cooperative housing will be members of the cooperative. The composition of the board of directors will be drawn from that membership, initially by appointment and later by election from the general membership. The board should be composed of at least 5 members.

b. The board of directors, with assistance from the adviser to the board (discussed in a later section), will devise the rules and regulations under which the cooperative will operate. Additionally, the board will be responsible for management of the cooperative.

c. A membership list showing the names and addresses of each member will be maintained by the secretary of the cooperative.

d. Cooperative membership will require the deposit of a membership fee by each member as outlined in §1944.215(g) of this subpart. The fee will be retained by the cooperative for as long as the person remains a member of the cooperative. The fee will be refunded to the person when membership is terminated.

4. The applicant should communicate with officials of the community early in the development of the proposal to explain the benefits of the proposed housing to the community. This meeting will serve to remove the uncertainty of the impact of the housing on the community and may aid in a timely processing of the loan request. The support of community officials is helpful in obtaining environmental clearances, possible zoning changes, favorable taxation, etc.

5. *Initial operating capital.* a. All applicants must have enough initial operating capital to get started. When justified, FmHA or its successor agency under Public Law 103-354 may include these funds in a loan made to a consumer cooperative, nonprofit organization or public body. Initial operating capital should be sufficient to pay such costs as property and liability insurance premiums, fidelity coverage premiums when the applicant is an organization, utility hook-up charges and deposits, maintenance and other equipment, lease forms, furnishings, loan payments that may become due during construction and other initial expenses.

b. At least 2 percent of the total development cost of the project is required for initial operation and maintenance costs. The applicant can determine the amount required by working out a detailed budget of income and expenses for the period of time until the housing is ready for occupancy and income will be available. The actual budget may indicate that more than 2 percent is needed.

6. *Analysis of market to determine demand for rental housing.* a. Applicants should discuss with the servicing official the type of market analysis that will be needed. Applicants must comply with paragraph II of exhibit A-7 when preparing market information.

b. Exhibits A-2 and A-3 are sample forms which may be modified by the applicant to assist in the assembly of the information for the market analysis.

7. *Planning to serve the market.* a. Planning the housing to serve the market in the community involves more than obtaining a blueprint of the building. It requires a careful evaluation of conditions in the community and careful planning to assure that the result will be good housing designed for independent living at a cost eligible tenants can afford. Well planned housing is:

(1) Convenient, attractive, safe and comfortable.

(2) Easily maintained.

(3) Located where tenants or members can have easy access to the goods and services they require for daily living.

(4) Planned to meet all codes, regulations, and acceptable construction practices.

(5) Priced within an affordable range of its prospective tenants and members.

(6) Energy efficient and complies with FmHA or its successor agency under Public Law 103-354's thermal performance standards.

b. The servicing official and State Office architect can provide information that will help the applicant in planning the housing.

8. *Selecting an architect.* a. The services of an architect are required for all housing projects which have more than four units. The cost of a registered architect/engineer may be included in the loan.

b. Before anything more than schematic drawings are prepared, the applicant and its architect, the FmHA or its successor agency under Public Law 103-354 architect/engineer and the servicing official should arrange a meeting. This meeting will acquaint the applicant's architect with the purposes of the housing and FmHA or its successor agency under Public Law 103-354's requirements. This will be helpful in eliminating misunderstandings. Among the topics that should be discussed are:

(1) Objectives of the housing program.

(2) Design requirements that will produce good housing at reasonable cost.

(3) Stages at which FmHA or its successor agency under Public Law 103-354 must review plans and specifications.

(4) Services the architect will be expected to perform.

(5) Agreement between architect and applicant.

9. *Selecting a site.* a. The location of the housing is an important part of planning to serve the market. Occupants should have easy access to required services. A desirable

residential setting within a rural community is essential.

b. Site cost is also important. The total cost of the site, including the cost of improvements and the price of the land, must be considered. Both may be included in the loan. However, loan funds made available to purchase land may not exceed the present market value of the land in its present condition as determined by an FmHA or its successor agency under Public Law 103-354 appraisal.

c. Before buying a site, the applicant should consult the architect to determine the suitability of the site for the proposed housing. The applicant must consider the site requirements detailed in paragraph III of exhibit A-7 of this instruction. The applicant should not enter into any firm agreement to buy a site with the expectation of receiving an FmHA or its successor agency under Public Law 103-354 loan without consulting with the servicing official and prior to the Agency's completion of the environmental impact review.

10. *Drawings, specifications and cost estimates.* The size, complexity and cost of housing projects can vary from a duplex located on a small building lot to a complex of buildings located on a site containing several acres. The applicant must provide drawings and specifications in accordance with paragraph IV of exhibit A-7 of this subpart.

11. *Budgets.* a. The initial budget should cover the period from the date the first construction expenses are incurred until the end of the applicant's first fiscal year following completion of the housing. After the final cost estimate has been made and the amount of the loan needed has been determined, a budget for a typical year should be developed.

b. This budget should be based on a typical annual operation after the project is occupied. Budgeting is an important part of the management. The applicant should spend enough time working on it to assure that the estimates are realistic. Budgets will be required each year until the FmHA or its successor agency under Public Law 103-354 loan is repaid in full. The budget serves several purposes including:

(1) Helps determine rental or occupancy rates.

(2) Indicates financial soundness.

(3) Serves as a guide for paying expenses.

c. Form FmHA or its successor agency under Public Law 103-354 1930-7, "Multiple Family Housing Project Budget," and its accompanying exhibit A-6 of this subpart are a sample budget form and utility allowance form.

12. *Loan resolution or loan agreement.* When the applicant is a corporation or an individual applying for a loan above certain amounts, a copy of the required loan resolution or loan agreement should be obtained

from and discussed with the servicing official before the loan docket is developed. Among other things, this document outlines how the income from the housing is to be used. These requirements should be understood at the time the budget is developed.

13. *Rental management plan.* A detailed management plan will be developed which will outline the basic policies and procedures to be followed and the duties of the officers and employees. The applicant must manage the project in accordance with the requirements of subpart C to part 1930 of this chapter.

14. *Rental manager and caretaker.* a. A comprehensive management program is essential to the successful operation of the project. A carefully written plan should be developed in accordance with exhibit B of FmHA Instruction 1930-C.

b. The use of an onsite manager should be based on the size of the project. The manager should be readily available to the tenants. The manager might be one of the tenants or a member of the board of directors of a non-profit corporation. The manager's duties should be specified in the management plan.

c. The board of directors of a corporation is responsible for overall supervision and management of all its affairs. The board should delegate actual operating and management responsibility to committees or individuals and meet often enough to see that enterprise is being managed successfully.

15. *Cooperative self-management.* a. The success of cooperative housing will depend on how well the members are able to manage the cooperative themselves with assistance from the adviser to the board. The cooperative must first develop and designate those areas of responsibilities to be delegated to committees, a list of the committees, and the functions of the committees. A copy of this information will be provided to each prospective member.

b. It will be necessary for the proposed board of directors to become familiar with how a cooperative is supposed to work before it is able to successfully assume the responsibilities of running the cooperative. This can best be achieved by participating in programs designed for the express purpose of educating potential board members. The prospective board members will be expected to take part in such a training program.

c. Participation on committees by members will be on a voluntary basis. However, if it appears a committee does not have sufficient numbers for it to adequately operate, then additional members will be expected to volunteer their time and talents. Thus, participation on committees is voluntary up to a point. If a member has experience in a particular area, that member should be encouraged to join the committee which will benefit from his/her experience. The cooperative will need a total commitment from the

membership in order to assure success of self-management. Examples of the types of committees which may be considered are:

- (1) Maintenance
- (2) Groundskeeping
- (3) Communications
- (4) Budget and finance
- (5) Rules
- (6) Recreation
- (7) Home service

d. If the cooperative is not successful in managing itself, professional management will be hired by the cooperative.

16. *Occupancy policies.* a. Applicants should review carefully the occupancy requirements with the servicing official. Particular attention should be given to the following requirements:

(1) The housing must be open to all eligible persons regardless of race, color, religion, sex, handicap, familial status, age, or national origin.

(2) The incomes of tenants and the initial incomes of cooperative members must be within the maximum income limits approved by FmHA or its successor agency under Public Law 103-354.

b. Additional guidance concerning occupancy in congregate housing projects can be found in exhibit J of subpart C of part 1930 of this chapter.

17. *Cooperative board of directors.* The board will essentially be the backbone of the cooperative structure. In this capacity it will be responsible for establishing the policies and procedures which will govern the operation of the cooperative and for enforcing those policies and procedures. The board will be composed of members of the cooperative with the same interests and concerns as the general membership. For instance, instituting an increase in the occupancy rates or terminating a member's right to cooperative ownership because of serious repeated violations of cooperative rules and regulations will be the types of actions which are taken by the board. The members of the board will be affected by these same decisions since they must adhere to the same rules and regulations as the rest of the cooperative community.

18. *Adviser to the board.* Resident(s) of the community who is not a member of the cooperative will serve as an adviser to the board during the period of formation and until the board of directors has effectively demonstrated its ability to manage the cooperative. At that time, the adviser will maintain close contact with the cooperative and provide advice and assistance as needed. The adviser may also be an organization; however, one specific individual will have sole contact with the board to eliminate confusion and to prevent one person from countermanding another's instructions. The adviser will closely monitor the cooperative for at least 2 years after it becomes its own manager. This time

may vary, depending on the circumstances. The adviser must be very carefully selected to ensure that adequate guidance is given to the board. The adviser must be able to meet certain criteria in order to provide the best possible counsel. The Qualifications of an Adviser to the Board, Relationship of Adviser to Members, and Adviser Responsibilities, found at exhibits E, E-1, and F of this subpart, should be used in evaluating potential advisers. While it may not be possible to find some one individual or individuals who can meet all the requirements outlined, the criteria should be used as guides in determining the best candidate. FmHA or its successor agency under Public Law 103-354 will provide counsel to the cooperative during the interview period and must approve the selection of the individual(s). We recognize the adviser will require compensation for services rendered, however, the amount paid should not severely limit the amount of patronage capital accruing to the members.

19. *Management reserve.* The board's ability to manage the cooperative will determine whether members will receive equity from membership in the cooperative. A set rate for professional management will be assessed each month as part of the occupancy rate and will be maintained in a separate reserve account. If the cooperative is successful at managing its own affairs during the year, the amount accumulated in the reserve will be assigned equally to each member at the end of the year as patronage capital. This same procedure will be followed each year, allowing a buildup of patronage capital. If professional management is hired by the cooperative to correct deficiencies which have arisen from poor self-management, further accumulations to the management account will then be used to pay for professional management and the amount being accrued to the members' patronage capital account will be suspended. If the amount being accumulated for management is not sufficient to meet the needs, occupancy rates will be increased to cover the expense of management. When the cooperative begins to again manage itself, the assessment for the management reserve will resume as previously stated. Any other income remaining at the end of the year will also be assigned as patronage capital. Assignment from both of these sources must be accomplished in accordance with the IRS ruling concerning patronage distribution. Careful records must be kept to track the monthly amount being contributed by each member to the management reserve account so that the cooperative will know how much patronage capital the member is entitled to should membership be terminated prior to the end of the fiscal year. FmHA or its successor agency under Public Law 103-354 rental assistance proceeds are not to be used to make the member's contribution to the management reserve account. Therefore,

the member must have sufficient income from which to make this payment. If it becomes necessary to hire full-time professional management, then the management fee will be considered part of the shelter cost and thus eligible for RA. FmHA or its successor agency under Public Law 103-354 will assist the adviser to the board in determining if and when professional management will be hired in lieu of self-management. In the event the adviser and FmHA or its successor agency under Public Law 103-354 are unable to reach an agreement regarding the hiring of professional management, the ultimate decision will rest with FmHA or its successor agency under Public Law 103-354. Compensation paid to the adviser will be shared by members through the deduction of equal amounts from their management reserve payments.

20. *Rules and regulations.* The rules and regulations for tenants and members should be developed by the applicant and a copy included in the loan docket.

21. *Lease or occupancy agreement.* The applicant should develop an application form for occupancy and a lease or occupancy agreement form in accordance with the requirements of subpart C of part 1930 of this chapter. Exhibit J of this subpart is to be used as a guide for developing an occupancy agreement. Copies of these forms should be included in the loan docket.

22. *Affirmative fair housing marketing.* In order to promote proper planning for initial rent-up and occupancy, the servicing official will meet with the applicant after loan approval, preferably at the preconstruction and/or the pre-rent-up or pre-occupancy conference to discuss the Affirmative Fair Housing Marketing Plan or other similar agreement approved for the project. In the case of a cooperative, the servicing official will discuss the Plan at the loan request stage.

V. REVIEW OF THE COMPLETE DOCKET

A. When the applicant has developed the complete loan docket, it should furnish and discuss the information with the servicing official. SF 424.2, the information and materials listed in exhibit A-9 plus FmHA or its successor agency under Public Law 103-354 forms provided by the servicing official become the loan docket.

B. If the docket is submitted to the State Office for consideration, the State Director will indicate any special requirements that need to be met before loan approval or loan closing.

C. Commercial financing should be used for projects during the interim construction period if available at reasonable rates and terms, FmHA or its successor agency under Public Law 103-354 can make a conditional commitment to the interim lender that will loan the funds to finance the construction of

the project. The commitment will be conditioned upon acceptable performance by the builder and payment of all construction bills. After the conditions have been met, the FmHA or its successor agency under Public Law 103-354 loan will be closed to pay the interim construction indebtedness. Draws on interim loan funds will be made only as needed and will require the joint approval of the applicant and the FmHA or its successor agency under Public Law 103-354 servicing official.

D. In other cases FmHA or its successor agency under Public Law 103-354 can make advances of loan funds for construction, the note and mortgage will be signed by the applicant and the loan funds deposited in a joint bank account at loan closing. The loan funds are disbursed from the bank account as needed. Checks on the account must be signed by the borrower and countersigned by the FmHA or its successor agency under Public Law 103-354 servicing official.

VI. CONSTRUCTION

The start of construction is the first physical sign that the housing will become a reality. The construction period is a most critical period of time.

A. *Competitive bidding.* 1. Competitive bidding is recommended and may be required by FmHA or its successor agency under Public Law 103-354 in some cases. If required, the State Director's letter sent after the loan is authorized will instruct the servicing official to have the applicant or its architect complete the necessary bid documents.

2. The applicant and the architect should invite competent contractors to bid on the housing. If bids are within the estimates, the successful bidder will be selected and the contract for construction will be awarded. During construction, a qualified FmHA or its successor agency under Public Law 103-354 representative and the applicant and its architect will inspect the work to protect their respective interests in the project. Payment will be made from the FmHA or its successor agency under Public Law 103-354 loan funds, or interim loan funds, according to provisions in the contract.

B. *Construction without competitive bidding.* When competitive bidding is not required, the loan docket will include reliable cost estimates or a firm offer to build from a builder selected by the applicant. A contract concurred with by FmHA or its successor agency under Public Law 103-354 will be executed by the applicant and the contractor. If full architectural services are obtained by the applicant, inspection of the work will be performed by the architect's staff. The applicant and FmHA or its successor agency under Public Law 103-354 will inspect the construction to protect their respective interests in the project. Payments will be

made to the contractor in accordance with the terms of the contract.

C. *Starting construction.* Construction should not be started until the FmHA or its successor agency under Public Law 103-354 loan is closed or the FmHA or its successor agency under Public Law 103-354 commitment has been made to the interim lender.

VII. OPEN HOUSE

Promotion of the housing availability should start at least 90 days prior to completion. The applicant may want to create interest in the housing and build up the list of prospective tenants or members by having a dedication ceremony. This will attract attention and remind the local residents of what the housing means to the community. This is especially recommended for housing developed by nonprofit corporations.

VIII. EXHIBITS

The following exhibits may be used when applicable and, if necessary, adapted to meet the specific needs of applicants.

Exhibit

- A-1 Legal Services Agreement
- A-2 Survey of Existing Rental Housing
- A-3 Rental Housing Survey
- A-4 Cooperative Housing Survey
- A-5 Housing Survey Summary
- A-6 Housing Allowances for Utilities and Other Public Services
- A-7 Information to be Submitted with a Loan Request for a Rural Rental Housing (RRH) or a Rural Cooperative Housing (RCH) Loan
- A-8 Outline of Professional Market Study
- A-9 Additional Information to be Submitted for Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) Loan Requests
- A-10 [Reserved]
- A-11 Processing Guidelines for Loans for Equity to Avert Prepayment
- A-12 Market Study Checklist (Available in Any FmHA or Its Successor Agency Under Public Law 103-354 Office)
- A-13 Work Sheet for Loan Calculation (Available in Any FmHA or Its Successor Agency Under Public Law 103-354 Office)
- A-14 Information To Be Submitted for Subsequent Loans (Available in Any FmHA or Its Successor Agency Under Public Law 103-354 Office)

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RHS, RBS, RUS, FSA, USDA

Pt. 1944, Subpt. E, Exh. A-2

EXHIBIT A-1 TO SUBPART E OF PART 1944—LEGAL SERVICES AGREEMENT (FOR COOPERATIVE OR OTHER NON-PROFIT ORGANIZATIONS)

Agreement made this _____ day of _____, 19____ between the _____, hereinafter called the (owner) (board of directors), and _____, hereinafter called the attorney, witnesseth:

Whereas the (owner) (board of directors) intend to form a cooperative or other non-profit corporation, hereinafter called the (corporation) (cooperative), to construct and operate a rural housing project in

(Town) (County) (State) and to obtain a loan from the Farmers Home Administration or its successor agency under Public Law 103-354 to finance the construction, and the attorney agrees to perform all legal services necessary to incorporate the (corporation) (cooperative), and to perform all other customary legal services necessary to the organization, financing, construction, and initial operating of the proposed rural housing project, such services to include but not to be restricted to the following:

1. Prepare and file incorporating papers and supervise and assist in taking other necessary or incidental actions to create the (corporation) (cooperative) and authorize it to finance, construct, and operate and proposed housing project.
2. Prepare for and furnish advice and assistance to the owner, or to the board of directors and officers of the corporation, in connection with (a) notices and conduct of meetings; (b) preparation of minutes of meetings; (c) preparation of adoption of necessary resolutions in connection with the authorization, financing, construction, and initial operation of a rural housing project; (d) special tax treatment applicable to housing cooperatives; (e) necessary construction contracts; (f) preparation of adoption of bylaws and related documents; (g) any other action necessary for organizing the (corporation) (cooperative) or financing, constructing, and initially operating the proposed housing project.

3. Review construction contract, bid-letting procedure, and surety and performance bonds.

4. Examine real estate titles and prepare, review and record deeds and any other instruments.

5. Cooperate with the architect employed by the (owner) (board of directors) in connection with preparation of survey sheets, easements, and any other necessary title documents, construction contracts, and other instruments.

6. Render legal opinions as required by the (owner) (board of directors) or the Farmers Home Administration or its successor agency under Public Law 103-354, United States Department of Agriculture.

7. (Owner) (board of directors) agree to pay the attorney for professional services in accordance with this agreement, as follows:

The fees to be payable in the following manner and at the following times:

The attorney states and agrees that of the above total fees, _____, represents fees for services in connection with the organization and incorporation of the (corporation) (cooperative).

The (owner) (board of directors) and the attorney further covenant and agree that, if upon organization and incorporation, the (corporation) (cooperative) fails or refuses to adopt and ratify this agreement by appropriate resolution within _____ days, this agreement shall terminate and (owner) (board of directors) shall be liable only for payment for legal services rendered in connection with such organization and incorporation.

Signed this _____ day of _____ 19____.
Attorney: _____
(Owner)
(board of directors)

[56 FR 2245, Jan. 22, 1991]

EXHIBIT A-2 TO SUBPART E OF PART 1944—SURVEY OF EXISTING RENTAL HOUSING

Name	No. of units	BR mix	Type	Year built	Rent	Vacancies	Location	Amenities
								Drapes Carpet Central cooling Dishwasher Garbage disposal TV cable

EXHIBIT A-3 TO SUBPART E OF PART
1944—RENTAL HOUSING SURVEY

Yes No

(SAMPLE)

A rental housing project is being planned for (name of community.) The project would provide comfortable living at monthly rental rates of (Indicate proposed basic rent by number of bedrooms.) Your opinion on the following will help us to determine whether such a project is practical. This information does not obligate you in any way.

1. What age group are you in? 62 or over []
50-61 [] 35-49 [] Under 35 []
2. Are you or members of the household handicapped or impaired and in need of specially designed housing arrangements? yes []
no []
3. Number of person(s) in your household: _____
4. Approximate annual income from all sources including any social security pension, payments made on behalf of minor children, public assistance, etc.: \$ _____.
5. Do you own () or rent () present residence?
6. Do you live in house () apartment () room () mobile home () on a farm () in town ()?
7. Is your present housing modern () not modern, but adequate () inadequate (). If inadequate, in what respect? _____.
8. What amount of monthly rent do you pay with utilities included? \$ _____.
9. Would you pay 30 percent of your monthly income for modern housing for your family? yes () no ()
10. Would you be willing to move in if an apartment were available _____, 19__? yes () no ()
11. Do you have a car? No, 1, 2, 3 (circle)

Name _____
Address _____

(including city/town)

Telephone Number _____
Location of employment _____

For Elderly and Congregate Housing

12. Number of meals you would like prepared for you per day _____
13. What other services would you like to have available to you?

Yes No

- a. Housekeeping services
- b. Personal care services
- c. Social and recreational activities services.
- d. Linen and laundry services.
- e. Health and medical related services.
- f. Beauty and barber services.

g. Transportation or access services.

h. Other (specify)

14. List any hobbies or organizational membership you have.

NOTE TO APPLICANT: This sample survey form is for your use in evaluating the need for new rental units in the community and its market area. You should be prepared to explain the methodology of the survey since FmHA or its successor agency under Public Law 103-354 will be spotchecking the respondents' answers. How the survey is performed can influence the outcome; therefore, it is incumbent upon you to see that the manner in which it is conducted is suitable and acceptable to FmHA or its successor agency under Public Law 103-354. For instance, compensation being paid to someone for survey work should not be dependent upon the number of respondents who would be willing to move into the project. The survey should be based on a random sampling of persons now residing in the market area. Things to avoid are surveying from the telephone book listing or a door-to-door canvass of a certain segment of the community. We want the development of rental units to be based upon actual circumstances prevailing in the market area in order that the housing development will present a secure and economical living arrangement for the persons in need of the housing.

EXHIBIT A-4 TO SUBPART E OF PART
1944—COOPERATIVE HOUSING SURVEY

BEFORE ATTEMPTING TO ANSWER THESE QUESTIONS, PLEASE READ THE *GUIDELINES FOR UNDERSTANDING THE PRINCIPLES OF COOPERATIVE HOUSING*. NOW TAKE TIME TO ANSWER THE FOLLOWING QUESTIONS AS HONESTLY AS YOU CAN.

(Circle yes or no)

1. Are you willing to share the responsibilities required of a cooperative member?
yes _____ no _____
2. If asked, will you serve on the board of directors or on a committee?
yes _____ no _____
3. Are you willing to help in maintaining the cooperative property?
yes _____ no _____
4. Do you now have a better idea of what cooperative housing really is?
yes _____ no _____
5. Do you want to ask more about the cooperative before deciding whether to join?
yes _____ no _____
6. If the answer to question 5 is "yes," will you come to an information meeting to be held in town?

RHS, RBS, RUS, FSA, USDA

Pt. 1944, Subpt. E, Exh. A-6

yes _____ no _____
 7. Have you answered the questions truthfully? Did you answer "no" to any of questions 1, 2, or 3? If so, this type of housing is not for you. If you are interested, please go on to complete the second portion of this survey.

1. How many persons in your household?
 adults _____
 children _____

2. Approximate annual income from all sources: \$ _____

3. Are you or members of the household handicapped or impaired and in need of specifically designed housing arrangements?
 yes _____ no _____

4. An informal meeting is scheduled for _____ a.m./p.m., on _____, 19____, for the purpose of discussing a proposed _____-unit cooperative planned for this community. At that time a representative of the cooperative will be on hand to answer other questions you may have.

So that we may know how many persons to expect at the meeting, we ask that you give us your name, address, and phone number.

NAME _____
 ADDRESS _____

PHONE _____

[56 FR 2245, Jan. 22, 1991]

**EXHIBIT A-5 TO SUBPART E OF PART
 1944—HOUSING SURVEY SUMMARY**

(SAMPLE)

Item	Age—Head of household			
	62 or over	50 to 61	35 to 49	Under 35
Handicapped:				
Yes
No
Household Size (Bedrooms Needed):				
1 or 2 persons (1 bedroom)
3 to 4 persons (2 bedrooms)
5 to 6 persons (3 bedrooms)
7 to 8 persons (4 bedrooms)
Annual Income:				

[53 FR 2159, Jan. 26, 1988. Redesignated and amended at 56 FR 2245, 2246; 56 FR 65985, Dec. 20, 1991]

**EXHIBIT A-6 TO SUBPART E OF PART
 1944—HOUSING ALLOWANCES FOR
 UTILITIES AND OTHER PUBLIC SERVICES**

Effective Date _____

Name of Borrower _____

Location and Identification of Project _____

PART I

Utility or service	Monthly dollar allowances					
	O-BR	1-BR	2-BR	3-BR	4-BR	5-BR
Heating:						
a. Natural Gas
b. Bottle Gas
c. Electric
d. Oil
Air Conditioning
Cooking:						
a. Natural Gas
b. Bottle Gas
c. Electric
Other electric lighting, refrigeration, etc.
Water Heating:						
a. Natural Gas
b. Bottle Gas
c. Electric
d. Oil
Water
Sewer
Trash Collection
Other (specify)
Total allowance
(Round to next highest dollar)

Prepared by:
 Borrower or Agent

Title
 Signature

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Date _____
 Approved by Farmers Home Administration
 or its successor agency under Public Law
 103-354
 Name _____
 Title _____
 Signature _____
 Date _____

PART II

Block A

To: _____
 Name of Tenant _____

Address of Tenant _____
 No. of Bedrooms _____

You will be billed directly for utilities and service charges. Block B sets forth the allowances credited in your rent for the payment of utilities. You may be billed for more or less than shown in Block B depending on your use of utilities

Signature of Borrower or Agent _____
 (Date) _____

BLOCK B

Allowance for utilities and services billed directly to and paid by tenant	Per month
Heating	\$
Air Conditioning
Cooking
Other Electric
Water Heating
Water
Sewer
Trash Collection
Other (Specify)
Total (Round to next highest dollar)

INSTRUCTIONS FOR PREPARATION AND USE OF HOUSING ALLOWANCES FOR UTILITIES AND OTHER PUBLIC SERVICES

I. *General.* These instructions are for completing exhibit A-5 for the establishment and use of approved utility allowances for tenants. The objective will be to establish allowances at levels that will apply to the majority of the households assigned to the specified size unit.

II. *Determining allowances.*

A. *Existing construction.* The borrower will provide information which shows the utility bills and fees for public services which have been charged to units in the project in previous years. If possible, this historical data should cover a period of at least 24 months and should show billings to all types and sizes of units in the project. If data is not available on the specific project, data from similar projects may be substituted. Consideration should be given to making proper ad-

justments in the data caused by some tenants' excessive use of utilities. Current rate schedules and known rate increases will be used to estimate utility allowances. The following local sources should be contacted as appropriate:

1. Electric utility suppliers.
2. Natural gas utility suppliers
3. Water and sewer suppliers.
4. Fuel oil and bottle gas suppliers.
5. Public service commissions.
6. Real estate and property management firms.

7. State and local agencies including public housing authorities.

In cases where a project uses a single meter for more than one living unit or where a single fuel supply or heating or cooling plant is used for more than one unit, the following factors will be used to determine the pro rata share of utility costs or public service fees per living unit:

Size of unit	Factor
0-BR	0.5
1-BR	0.7
2-BR	0.9
3-BR	1.1
4-BR	1.4
5-BR	1.6

Example: An 8-plex structure containing four 1-bedroom apartments and four 2-bedroom apartments has an average annual consumption of 42,000 kilowatt-hours of electricity. Allowance per unit is calculated as follows:

Four (one-bedroom) @ .7 =2.8
 Four (two-bedroom) @ .9 =3.6
 Total 6.4

Total use total of factors \times cost per kilowatt-hour (kwh)-average billing (assume \$.04 per kwh)

$42,000/6.4 \times .04 = 262.50$

unit factor \times average billing = unit allowance
 (one bedroom) $/.7 \times 262.50 = \$183.75/\text{yr.}$
 (two bedroom) $/.9 \times 262.50 = \$236.25/\text{yr.}$

B. *New construction.* The applicant, with assistance from its architect, mechanical engineer or other heating and cooling system specialists, will provide heating and cooling load calculations for each type and size of unit. Heating and/or cooling costs will be calculated from these load factors using current rate schedules and known rate increases. Procedures described in the American Society of Heating, Refrigeration and Air Conditioning Engineers "Handbook of Fundamentals," the National Association of Homebuilders "Insulation Manual Home, Apartments," or other recognized authority may be used.

General appliance and lighting loads and fees for public services should be estimated using data from the local utility companies

and from other sources listed in paragraph II A above.

C. Type of allowance.

1. Separate heating and cooling allowances will be estimated for the various types of multiple family housing financed by FmHA or its successor agency under Public Law 103-354 in the project. For example, separate allowances may be needed for duplexes, row or townhouses, or for garden and low and medium rise apartments. In addition to establishing different heating and cooling allowances for various types of structures, attention should be given to different allowances for water depending on whether the tenants will have responsibility for lawn care.

2. Allowances for air-conditioning will be established only for projects in which the owner furnishes a central air-conditioning system or other type unit as a part of the permanent equipment.

3. The cost of gas and electricity varies according to amounts consumed as shown on the appropriate rate schedules of the supplier. It is not possible to compute exactly the cost of electricity for any given function without knowing the total electrical usage for a unit. However, because neither the borrower nor the tenants know beforehand what the combination of utilities for any unit rented will be, it will be necessary to approximate the allowances for each function (e.g., heating, cooking, etc.) as follows: For electricity, the rates used for lighting, refrigeration and appliances should be from the top of the rate schedule or the higher unit costs. Allowances for electric cooling, water heating and space heating should be computed from the middle or lower steps in the rate schedules. Similarly, allowances for gas used for water heating and cooking should be computed using rates from the top of the rate schedule and for heating from the lower steps.

III. Preparation by borrower or applicant.

A. *Applicable projects.* Except for projects operating on a profit basis, exhibit A-5 will be completed in an original and three copies in all instances where the tenants pay utilities or authorized services directly. When the borrower pays all utilities, part I of exhibit A-5 may also be required as part of the budget submitted for any new project if the loan approval official determines it is needed to properly evaluate projected utility costs. This form will establish the allowances for all size units in the project. The allowances will be adequate for all utilities and any authorized services which are or will be payable directly by the tenants, except telephone and cable TV. The forms will be signed by the borrower. The original and two copies of the form will be submitted to FmHA or its successor agency under Public Law 103-354. Backup data and necessary documentation should be included with the submission.

B. *Submission of supporting data to FmHA or its successor agency under Public Law 103-354.* The applicant will submit to FmHA or its successor agency under Public Law 103-354 adequate data to justify the utility allowances for the project. The data will include the following:

1. Completed exhibit A-5.
2. List of local sources contacted for information and copies of any data provided by such sources.
3. Any data on allowances already established for the area.
4. Complete narrative statement and computations on method used in arriving at the allowances.

IV. *Actions by FmHA or its successor agency under Public Law 103-354.* If FmHA or its successor agency under Public Law 103-354 finds the allowances acceptable, the approval portion of part I will be completed. The servicing official will keep a copy for the servicing office file and return the original to the borrower. If the proposed utility allowance is unacceptable, the borrower will be requested to revise the data and resubmit it for further consideration.

V. *Subsequent action by borrower.* After approval by FmHA or its successor agency under Public Law 103-354, the borrower will complete part II of exhibit A-5 and provide copies for each tenant paying utilities directly by attaching it to the lease entered into by the borrower and tenant. The form will provide the household with the amount of allowance for each utility and service which is to be paid by the tenant. If all utilities and services are paid by the borrower, exhibit A-5 need not be attached to the lease.

[53 FR 2159, Jan. 26, 1988. Redesignated at 56 FR 2245, Jan. 22, 1991; 56 FR 65985, Dec. 20, 1991; 58 FR 40954, July 30, 1993; 59 FR 6896-6897, Feb. 14, 1994]

EXHIBIT A-7 TO SUBPART E OF PART 1944—INFORMATION TO BE SUBMITTED WITH A LOAN REQUEST FOR A RURAL RENTAL HOUSING (RRH) OR A RURAL COOPERATIVE HOUSING (RCH) LOAN

The following information is to be submitted with SF 424.2:

I. Eligibility.

A. *Financial Statements for Rental Projects.*—Each applicant must submit a current, signed, and dated financial statement. The financial statement must reflect sufficient financial capacity to meet the applicant's equity capital and initial operating capital requirements. Applicants may contribute cash, free and clear title to the building site, or a combination of both as an equity contribution. The initial operating capital must be furnished in cash.

(1) For a corporation (other than a non-profit corporation) or a trust, financial statements will be required from each member, stockholder or beneficiary who holds an interest in the organization in excess of 10 percent.

(2) For a partnership, financial statements will be required from each general partner who holds an interest in the organization.

(3) A financial statement will be required for limited partners in a limited partnership who will have 10 percent or more ownership.

(4) For applicants that are not legally organized at the time of filing the loan request, financial statements will be required from all of the proposed parties in proportion to the proposed ownership interest of each part. However, the applicant must be legally organized prior to loan approval and must submit financial statements.

(5) For cases in which financial statements are required from an individual, the financial statements must also include the financial interest and signature of the spouse.

(6) When the applicant and/or general partner(s) have multiple applications pending and/or when the State Director is uncertain of the applicant's ability to provide the necessary borrower contribution required by §1944.213 (b) of this subpart, 2 percent initial capital contribution and/or other assets needed for a sound loan, the State Director may request the applicant to submit additional financial information relative to its financial position.

(7) All financial statements submitted must contain the following statement immediately preceding the signature line:

(A) In new projects in which the loan has not been closed:

I/we certify the above is a true and accurate reflection of my/our financial condition as of the date stated herein. This statement is given for the purpose of inducing the United States of America to make a loan or to enable the United States of America to make a determination of continued eligibility of the applicant for a loan as requested in the loan application of which this statement is a part.

(B) For projects in which the loan has been closed and the applicant has been formed:

I/we certify the above is a true and accurate reflection of my/our financial condition as of the date stated herein. This statement is given for the purpose of enabling the United States of America to make a determination of continued eligibility of the borrower organization for a loan as requested in the application of which this statement is a part.

B. Financial Statements for Cooperative Members—Each prospective member must provide a statement of monthly income and expenses showing the repayment of debts and whether those payments are current. The statement must indicate that the person will

have the financial ability to meet the monthly occupancy rate requirement, while still meeting other monetary obligations. FmHA Form 1944-38, "Application for Cooperative Housing Assistance," may be used for this purpose. (See FMI for preparation instructions.)

C. The names and addresses of persons who have expressed an interest in becoming members of the cooperative. Signature and date evidencing this interest from each person will be obtained to fully document the need for the cooperative housing. This certification should contain a statement that the prospective member understands the cooperative type of organization and the time and effort each member must spend in its operating and maintenance.

D. For all cooperative projects containing over four units, the applicant must submit an Affirmative Fair Housing Marketing Plan for approval in accordance with §1901.203 of subpart E to part 1901 of this chapter. The plan must be prepared in a complete, meaningful, responsive and detailed manner.

E. Evidence Concerning the Test for Other Credit—Applicants must be unable to obtain other credit at rates and terms that will allow a unit rent or occupancy charge within the payment ability of the occupants. Based upon a review of the applicant's financial condition, the servicing official may require the applicant to provide documentation regarding the availability of other credit.

F. Statement of applicant's experience in operating rental housing and related business, including a statement on the proposed method of operation and management.

G. For an Organization Applicant—A copy of, or an accurate citation to, the specific provisions of State law under which the applicant is, or is to be organized; a certified copy of the applicant's actual, or a copy of the applicant's proposed charter, articles of incorporation, bylaws, partnership agreement, certification of limited partnership, or other basic authorizing documents; the names and addresses of the applicant's members, directors and officers; and, if a member of a subsidiary of another organization, its name, address, and principal business, if available.

H. Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 requires that applicants disclose identities of interest that will exist in the development of the proposed housing. Forms FmHA 1944-30, "Identity of Interest (IOI) Disclosure Certificate," and 1944-31, "Identity of Interest (IOI) Qualification Form," (available in any FmHA or its successor agency under Public Law 103-354 office) will be completed and submitted as part of the loan request package.

I. The social security or tax identification number will be required in all cases. The loan will be denied for refusal to furnish the

required social security or tax identification number.

(1) In the case of an individual, the social security number of the applicant must be provided. The spouse's social security number must also be provided when they have joint responsibility for the loan.

(2) In the case of a partnership, the tax identification number of the partnership must be provided if available and also the social security numbers of all the general partners and their spouses.

(3) In the case of a limited partnership, the tax identification number of the limited partnership is required. The social security number of all the general partners and their spouses should be secured if possible.

(4) In the case of a company, corporation or nonprofit organization, the tax identification number of the organization is required. The social security number of the officers should be secured if possible.

(5) If an organization does not have a tax identification number, the social security number of one of the officers must be used.

J. All known principals and affiliates are required to submit a properly completed Form HUD 2530/FmHA 1944-37, "Previous Participation Certification." Architects and attorneys who have any interest in the project other than an arms length fee arrangement for professional services are also considered principals. The form will be completed and processed according to the instructions attached to the form.

II. *Need and demand.*

A. Economic justification, the number of units, and the type of facility (family, elderly, congregate, mixed, group home, or cooperative) will be based on the housing need and demand of eligible prospective tenants or members who are permanent residents of the community and its surrounding trade area. Since the intent of the program is to provide housing for the eligible permanent residents of the community, temporary residents of a community (such as college students in a college town, military personnel stationed at a military installation within the trade area, or others not claiming their current residence as their legal domicile) may not be included in determining need and project size. Similarly, homeowners may not be included in determining need and project size. The market study must include a discussion of the current market for single family houses and how sales, or the lack of sales, will affect the demand for elderly rental units. The market study may discuss how elderly homeowners may reinforce the need for rental housing, but only as a secondary market and not as the primary market. The market study must assess need and demand for both family and elderly renter households. The conclusions of the market study must be provided to the community by the applicant, through direct contact with com-

munity officials whenever possible. The type of complex (family, elderly, etc.) that is proposed by the applicant must reflect the greater proportionate need and demand of the community, that is, the share or percentage of the community's total rental units that are designated for the elderly will be compared to the community's share of elderly households, and the share of total rental units for families will be compared to the share of family households in the community. (For mixed complexes, the unit mix must reflect the proportionate need of each household type.) In unusual circumstances, where there is a compelling need for a complex type that does not represent the greater proportionate need (i.e., family vs. elderly need), the State Director may consider granting an exception to this requirement. At least one of the following conditions must be met in order to consider an exception: the community's or State's housing plan indicates that the greater immediate need is for the complex type of the smaller proportionate need and the plan includes a specific proposal to address the housing needs of the other household type; the complex has the support of a public community forum represented by diverse interests; or the units are needed due to an emergency or hardship situation, for example, a loss of housing caused by a natural disaster. The circumstances for the exception must be documented in the casefile. The bedroom mix of the proposed units must reflect the need in the market area based on renter household size and the bedroom mix of existing units. Market feasibility for the proposed units will be determined by RHS based on the market information provided by the applicant (requirements are described in section II.E. of this exhibit). RHS' knowledge of the market area and judgment concerning the need for new units, RHS' experience with the housing market in the State and local area, and the U.S. Department of Housing and Urban Development's (HUD's) or similar lender's analysis of market feasibility for the proposed units.

B. The applicant must provide a schedule of the proposed rental or occupancy rates and, for congregate housing proposals, a separate schedule listing the proposed cost of any nonshelter service to be provided.

C. For proposals where the applicant is requesting Low-Income Housing Tax Credits (LIHTC), the applicant must provide the number of LIHTC units and the maximum LIHTC incomes and rents by unit size. This information will determine the levels of incomes in the market area which will support the basic rents while also qualifying the borrower for tax credits.

D. For Rural Cooperative Housing (RCH) proposals, market feasibility will be evidenced by the names and addresses of prospective members who have definitely affirmed their intention of becoming cooperative members in the proposed project. In the event some persons cannot be accepted for membership for financial or other reasons, the cooperative should obtain more names than the number of proposed units in order to assure adequate feasibility coverage. Exhibit A-4 of this subpart contains a Cooperative Housing Survey form which may be used for this purpose.

E. For Rural Rental Housing (RRH) proposals, except as permitted by section II. G. of this exhibit, a professional market study is required. The qualifications of the person preparing the market study should include some housing or demographic experience. The following requirements apply:

(1) A table of contents, the analyst's statement of qualifications, and a certification of the accuracy of the study must be included.

(2) Market analysts must affirm that they will receive no fees which are contingent upon approval of the project by RHS, before or after the fact, and that they will have no interest in the housing project. An analyst with an identity of interest with the developer will need to fully disclose the nature of the identity.

(3) The analyst must personally visit the market area and project site and must certify to same in the market study. Failure to do so may result in the denial of further participation by the analyst in the Section 515 program.

(4) A detailed study based upon data obtained from census reports, state or county data centers, individual employers, industrial directories, and other sources of local economic and housing information such as newspapers, realtors, apartment owners and managers, community groups, and chambers of commerce is required. Exhibit A-8 of this subpart details the specific information which professional market studies are required to provide. The study must be presented in clear, understandable language. Negative as well as positive market trends must be disclosed and discussed. Statistical data must be accompanied by analytical text which explains the data and its significance to the proposed housing. Mathematical calculations must be expressed in actual numbers and may be accompanied by percentages. Each table or section must identify the source of the data. A brief statement of the methodology used in the study should be included in the foreword and in other sections where necessary for clarity. RHS personnel will utilize the market study checklist found at exhibit A-12 of this subpart (available in any Rural Development office) as a means of measuring market study credibility.

(5) The market study will include:

a. A complete description of the proposed site and its location with respect to city boundary lines, residential developments, employment centers, and transportation; the location and description of available services and facilities and their distances from the site; a discussion of the site's desirability and marketability based on its location in the community, adjacent land uses, traffic conditions, air or noise pollution, and the location of competitive housing units; and a description of the site in terms of its size, accessibility, and terrain.

b. Pertinent employment data, including the name and location of each major employer within the community and market area, its product or service, number of employees and salary range, commute times and distances, and the year the employer was established at the location. If income data cannot be obtained from individual employers, salary information for the community can be obtained from the state employment commission.

c. Population data required by exhibit A-8 of this subpart, including population figures by year, number and percentage of increase or decrease, and population characteristics by age.

d. Household data required by exhibit A-8 of this subpart, including number of households by year, tenure (owner or renter), age, income groups, and number of persons per household.

e. Building permits issued and demolitions by year by single unit dwelling and multiple unit dwelling. In nonreporting jurisdictions, this information may be substituted with the number of requests for electric service connections, number of water or sewer hook-ups, etc., obtained from local suppliers.

f. Housing stock by tenure and vacancy rates for total number of units, one-unit buildings, two- or more-unit buildings, mobile homes, and number lacking some or all plumbing facilities.

g. A survey of existing rental housing by name, location, year built, number of units, amenities, bedroom mix, type (family, elderly, etc.), rental rates, and rental subsidies if any.

h. A projection of housing need and demand and the analyst's recommendation for the number, type, and size of units, based on the number of RHS and LIHTC income-eligible renter households, the existing comparable housing supply and vacancy rates, the absorption rate of recently completed units, the number of comparable units currently proposed or under construction, and current and projected economic conditions.

F. For congregate housing proposals with central dining area or housing involving a group living arrangement, a narrative statement from local, state, or federal government agencies supporting the current and

long-range need for the facilities in the community and its trade area is required.

G. For RRH proposals of 12 or fewer units, the State Director may authorize the use of a market survey to establish market feasibility on a case-by-case basis. This authority may be used when there is evidence of strong market demand, for example, very low vacancy rates and long waiting lists in existing assisted or comparable rental units. The casefile must be documented accordingly. Exhibits A-2, A-3, and A-5 of this subpart may be used for the market survey.

III. *Site.*

A. Size of tract and a plot map identifying its boundaries.

B. A map showing the location and other supporting information on the neighborhood and existing facilities, such as distance to shopping areas, churches, schools, available transportation, drainage, sanitation facilities, water supply and access to essential services such as doctors, dentists, pharmacies and hospitals. The map should also show significant features such as main highways, railroads, rivers and lakes. The use of property surrounding the site should also be indicated.

C. The applicant will provide evidence of having control of the proposed site either by ownership or by executing an option to buy with the current owner of public record.

D. Appropriate zoning or evidence of capability to be appropriately zoned.

IV. *General description of the housing planned.* A brief narrative description of the housing planned should include the following items:

A. The type of project and structures proposed, such as garden apartments for elderly and handicapped persons; townhouses for low- and moderate-income persons; congregate housing for senior citizens and handicapped persons, or housing designed for cooperative living.

B. The size of each type of rental unit measured in square feet of living area.

C. The size and type of other facilities to be included in the project, such as laundry rooms, storage spaces, etc., and a justification for any related facilities to be financed wholly or in part by RHS funds.

D. The total number of units and the number of each type of unit proposed.

E. The type of construction proposed and the method of construction, i.e., owner/build-er, negotiated bid or public bid.

F. A detailed cost breakdown of the project on Form FmHA or its successor agency under Public Law 103-354 1924-13, "Estimate and Certificate of Actual Cost," will be prepared and submitted by all applicants. In addition to completing the individual line items, the cost of items such as rights-of-way, equipment, and utility connections must be included and identified with the Form FmHA or its successor agency under

Public Law 103-354 1924-13. Off-site improvements and the method of prorating the cost between eligible and noneligible loan items must be provided with the Form FmHA or its successor agency under Public Law 103-354 1924-13. The cost breakdown must also separately show items not included in the loan, such as furnishings, equipment, and the noneligible off-site improvements. The trade item cost breakdowns must be updated just prior to loan approval.

G. Type of utilities such as water, sewer, gas and electricity and whether each is publicly, community or individually owned.

H. The comments and recommendations of any professional consultants regarding on- or off-site conditions that could affect the proposed project should be submitted, if available. Any comments addressing an adverse condition should include recommended corrective actions. Any special regulation waivers or variances that may be necessary should also be identified.

I. Schematic design drawings should be included with the narrative description and contain, as a minimum:

(1) Site plan, including significant ground contour lines.

(2) Floor plans of each living unit type and other type spaces.

(3) Building exterior elevations.

(4) Typical building exterior wall section.

J. A plot plan showing the relationship of the proposed structures, the property lines, streets, utility lines, alleys and adjacent structures and their uses. It should also show proposed off-street parking for the tenants or members and their visitors. Other facilities, such as private and public walks, private drives and recreation areas on and off the property, laundry drying areas, and garbage and refuse holding areas which are sufficient for the period between collections in the neighborhood should be shown.

V. The applicant must submit a signed statement agreeing to pay cost overruns from its own resources.

VI. Form RD 1940-20, "Request for Environmental Information."

VII. *Disclosures by Applicants.*

(A) Applicants will submit information regarding any other government assistance as defined in §1944.205 of this subpart from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof, that is expected to be made available with respect to the project for which the applicant is seeking.

(B) The applicant will submit the names of any interested parties as defined in §1944.205 of this subpart.

(C) The applicant will also submit a report detailing the expected sources and uses of funds that are to be made available for the project.

(D) The disclosures required in paragraphs (A)-(C) will be updated within 30 days of any

substantial change during the period of the application process.

VIII. For congregate housing proposals. Applicants must submit information on the services to be provided in accordance with exhibit E of this subpart.

[53 FR 2159, Jan. 26, 1988, as amended at 53 FR 7492, Mar. 9, 1988; 53 FR 36268, Sept. 19, 1988; 54 FR 14337, Apr. 11, 1989; 55 FR 13503, Apr. 11, 1990; 55 FR 26647, June 29, 1990; 55 FR 29558, and 29562, July 20, 1990. Redesignated and amended at 56 FR 2245, 2246, Jan. 22, 1991; 56 FR 65985, Dec. 20, 1991; 59 FR 6891, Feb. 14, 1994; 62 FR 25065, 25070, 25076, May 7, 1997; 62 FR 67223, Dec. 23, 1997]

EXHIBIT A-8 TO SUBPART E OF PART 1944—OUTLINE OF PROFESSIONAL MARKET STUDY

Market studies which do not address all segments of this outline will not be considered acceptable and may adversely affect the processing of preapplications. Preapplications with unacceptable market studies may be returned, deferred, or rejected, as determined appropriate by the servicing office.

The following information is to be used by analysts in the preparation of market studies for the Section 515 housing program. It generally contains the type and depth of information which Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 requires for evaluating the feasibility of prospective housing developments. The analyst will be expected to provide sufficient quantitative data (such as census tables), primary data (such as survey of existing comparables), and qualitative data (such as local contacts in the community) to support the conclusions reached. The analyst may present any other discussions and/or data which will help support the complete analysis of the market.

The outline provides for the demonstration of historical trends and allows the analyst to project into the 2 years beyond the last actual year of record. Additional guidance is offered in individual segments of the outline. You will need to provide a statement of your experience and why you think you are qualified to prepare such a study.

Determination of need and demand will be derived for prospective rental tenants only from: (1) Persons migrating into the area, (2) persons dwelling in family units who desire to move into their own units (elderly living with family members will only be considered if evidence of their interest in moving into the project is furnished with the market study), (3) conservative estimate (not to exceed 20 percent) of households living in substandard rental housing, (4) demolition of rental stock, (5) allowance for a 5 percent vacancy rate, and (6) conservative estimate (not to exceed 20 percent) of households expe-

riencing rent overburden provided the analyst has made a determination there are sufficient households in the market area to occupy any rental units vacated by those lower income persons who choose to move into the proposed project from the existing units. Substandard is defined as (1) Units lacking complete plumbing and (2) overcrowded (1.01 or more persons per room).

For proposed congregate projects, the analyst will be responsible for researching the current need for, and usage of, services in the market area. The types of services being used, the provider of the services, and their location will be included.

Homeowners will not be included in the determination of need and demand for rental units. The analyst will discuss the current market for single family houses and how sales, or the lack of, will affect the demand for elderly rental units. If the economic conditions reflect a trend toward normal selling times for houses in the market area, then the discussion should point to how elderly homeowners may reinforce the need, but only as a secondary market and not as the primary market.

A statement, with signature, certifying that the analyst (including an individual under contract to the analyst's company) actually traveled to and physically surveyed the community where the proposed project will be located is also required.

I. MARKET AREA—GENERAL

The market area will be the community where the project will be located and only those outlying rural areas which will be impacted by the project (excluding all other established communities). Except in specific cases of congregate housing projects where an expanded market may be justified, the market area will not include the entire county (or parish, township, or other subdivision). Any deviation from this definition must be coordinated with the servicing office. The market area must be realistic. The criteria for selection should be described by the analyst. A map showing the market area will be required. The following is an example of a market area description:

A. Based on an analysis of population and housing development patterns, major employers and commuting patterns, the effective market area for the subject proposal is defined to include all of (Name), 35 percent of (Name) and 25 percent of (Name) census divisions. This area is shown on Map 2 following Table 4 (page 11) in Section II of this report. In 1980, this geographic market area contained an estimated 6,350 persons (6.1 percent of the county total of 103,829 persons). During the 1970's decade, the overall market area experienced growth of 1,253 persons (representing 13.5 percent of total gains in the county). In 1990, the (Name) market area population of 7,603 represented 6.7 percent of

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the county population of 113,086. (See Table 4 and Map 2 in Section II for details.)

B. The effective market area for the subject proposal includes the town of (Name) and a portion of the unincorporated areas to the east and south. The (Name) River forms a natural barrier restricting development to the west. Housing development and population growth have occurred along major transportation corridors, particularly Interstate 81 and U.S. 11 between (Name) and (Name). Secondary growth has occurred along State Roads 63 and 68 to the northwest and southeast of (Name). The Interstate Industrial Park, with 16 employers providing 999 jobs, is centrally located within the market area.

II. SITE

This section will contain a full description of the site, its position in the community and location with respect to residential support services.

A. The proposed site is located in the eastern section of (Town) on (Major Thoroughfare). The area surrounding the site is predominantly comprised of modest single family dwellings. The terrain is gently sloped, with grass, oak trees, and some shrubs.

B. The site is currently zoned for commercial business and is currently owned by a local car dealer.

C. The site is approximately .3 mile east of the heart of town which contains a grocery store, drugstore, restaurants, banking facilities, the post office, and town hall. Other shopping is available .2 mile south at (Town) Plaza.

D. The medical clinic, which provides services of an osteopath, X-ray technician, a physician's assistant, and a nurse, is approximately .8 mile north of this site. This clinic is open daily and also provides 24-hour emergency service. The nearest hospitals are (Large Town) and (Town).

E. All public services are available at the site.

F. Photographs of the site are required.

G. Communities suitable for multi-family projects may have certain smaller businesses necessary for the day-to-day living convenience of the tenants and to supplement the employment base. For example, these may include, but not be limited to, pharmacy, restaurants and fast food establishments, grocery and department stores, hardware and sundries, etc. A representative number of these businesses are to be listed (by name) and location with respect to the proposed site.

Name of business and street address

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III. DEMOGRAPHIC CHARACTERISTICS

A. Economic profile.

1. *Labor force and employment trends between 1980 and the present year.* This will provide current year estimates and projected changes at the county level.

Civilian Labor Force and Employment Trends and Forecasts, _____ County, 1980-19 ____

	1990	19__ ¹	19__
Civilian Labor Force ² .			
Unemployment.			
Rate of Unemployment.			
Employment.			
Change in Total Employment.			

Number _____

Percent

	Total	Annual	Total	Annual
1980-1990.				
1990-19__.				
19__-19__ (2-year projection).				

¹ Preliminary—based on monthly data through ____.

² Data based on place of residence.

Source

2. *Employment data.* In order to determine how employment affects the market area, it will be necessary to show the number of employed persons for a 3-year period up to the current year, the increase and/or decrease and the percentage of unemployed at the county level. The employment figures can be obtained from the State Employment Commission.

Example

County _____

Year	Number	Change	Unemployment %
19__.			
19__.			
19__.			
19__ (through current year).			

Source

3. *Major employers.* This section will contain information pertinent to an analysis of the economic stability of the town. The major employers within the town and market area, the product or service offered by each employer, location of employer, and year each employer was established are types of data FmHA or its successor agency under Public Law 103-354 will need to evaluate. It is also important to know if the larger employers intend to increase or decrease

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number of employees in the immediate future or if there have been any significant recent changes in number of employees.

Example

Employer	Product/Service	Location	Year Established
Washington Aircraft.	Crop Dusting ...	Town	1957

In addition, the study will include the number of employees and average weekly salary listed in the place of work employment data for the classification groups of manufacturing; construction; trade; services; transportation, communications, and utilities (TCU); finance, insurance, and real estate (FIRE); and government.

4. *Employment outside of county.* The analyst will give the percentage of persons employed inside the county and driving times, if appropriate.

Age	Town, 1980-1990			County, 1980-1990		
	1980	1990	Change	1980	1990	Change
Under 18.						
19-34.						
35-54.						
55-61.						
62-74.						
75-84.						
85+.						

3. *Households.* A breakdown by town, market area, and county for last 2 census years, a current year estimate and a projection to the year the housing would be built (24 months) will have to be illustrated so that

household formations can be tracked. This data will tell us what portion of a housing demand is being created by an increase in numbers of new households.

Year*	In group			Persons per household
	Population	Quarters	Households	
1980.				
1990.				
19__.				

Projected: 19__ (2 years)

4. Households by Size/Type/Age of Members (elderly and congregate projects).

	Market		
	Town	Area	County
Households with:			
1 or more age 60 years and over.			
1 person household.			
2 or more persons (family).			
2 or more persons (nonfamily).			
1 or more age 65 and over.			
1 person household.			

Source

B. Demographic profile.

1. *Population.* The analyst will need to show population changes between 1980 and 1990, the reasons for the changes, the current year estimate and projected change. This information will be provided for the town, the market area, and the county. Any change in the County subdivisions (CCD, Township, Election District, etc.) between census years will have to be explained. These are to be shown in numeric characters as well as percentages.

Example

Year	Total			Annual	
	No.	Change	%	Change	%
1980.					
1990.					
19__ (current estimate).					

Projected: 19__ (2 years)

2. Age characteristics.

	Market		
	Town	Area	County
2 or more persons (family).			
2 or more persons (nonfamily).			

5. Household type and relationship—Persons 65+ (elderly and congregate projects).

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	Market		
	Town	Area	County
Total.			
In Households.			
In Family Households.			
Householder.			
Spouse.			
Other Relatives.			
Nonrelatives.			
In Nonfamily Households.			
Male Householder.			
Living Alone.			
Not Living Alone.			
Female Householder.			
Living Alone.			
Not Living Alone.			
Nonrelatives.			
In Group Quarters.			
Institution (persons).			

	Market		
	Town	Area	County
Other Persons in Group Quarters.			

6. *Households by tenure.* This section is one of the more important aspects of the market analysis. This information will enable FmHA or its successor agency under Public Law 103-354 to more closely pinpoint the number of households which would comprise the target group of its evaluation. If the projected percentage of renters exceeds the historic percentage of renters, the analyst will have to explain why there is an increase. The information will be provided for town, market area, and county.

Example

Year	Total households	Owner	Percent	Renter	Percent
1980.					
1990.					
Estimate: 19__.					
Projected: 19__ (2 years).					

7. *Households by size.* The study will provide number of households by household size for the town, market area, and county.

8. *Tenure by age.* Tenure by age of householder for town, market area, and county (elderly and congregate projects).

	Owner	Renter	Total
55-64.			
65-74.			
75 years +.			

9. *Households by income group.* With the advent of Low Income Housing Tax Credits (LIHTC), we have found that more emphasis must be placed on analyzing persons whose incomes qualify for LIHTC. This means families who earn 60 percent or less of the median income as established by the U. S. Department of Housing and Urban Development (HUD). Therefore, feasibility for projects expecting to receive tax credits will also be based on the incomes required to support the tax credits. This could mean a level of incomes either slightly lower or higher than FmHA or its successor agency under Public Law 103-354 very low-incomes. For those tax credit units occupied by low-income families, the monthly gross rent cannot exceed 30 percent of the family income. Gross rent includes utilities, but excludes payments of rental assistance by Federal, State, and local entities. The applicant will be responsible for notifying FmHA or its successor agency under Public Law 103-354 and the market analyst of the amount of tax credits being requested, the income percentage on which the

credits will be based, and the percentage of project units targeted for tax credit eligible persons. In those cases where less than 100 percent of the units will be designated for tax credit eligible persons, the incomes needed to support the non-LIHTC units will need to be analyzed. Income data will be shown for total and renter households. This information will be presented as follows: (It is recommended that decile distribution of incomes be obtained from HUD. Other sources are acceptable and must be identified.)

Incomes Needed to Support Proposed Rents + Utilities (without LIHTC):

1-Bedroom	2-Bedroom	3-Bedroom	4-Bedroom
\$ _____	\$ _____	\$ _____	\$ _____

Number of Tax Credit Units Requested for Project:

Percentage of Units to be Designated for Tax Credit Eligible Persons:

Tax Credit Eligible Incomes: (based on 50% [] or 60% [] of income)

\$ _____ \$ _____ \$ _____ \$ _____

Tax Credit Eligible Rents:

\$ _____ \$ _____ \$ _____ \$ _____

Proposed Project Rents:

\$ _____ \$ _____ \$ _____ \$ _____

Town or Market Area

Household income groups	All households		Renter households	
	Number	Percent	Number	Percent
Less than \$000.				
\$000-\$000.				
\$000-\$000.				
\$000-\$000.				
\$000-\$000.				
Total.				
Median.				
Elderly Household Income Groups:				
Less than \$.				
\$000-\$000.				
\$000-\$000.				
\$000-\$000.				
\$000-\$000.				
Total.				

Incomes of those eligible to live in the proposed project, considering tax credits and availability of rental assistance (RA):
\$000-\$000

Source

County

Household income groups	All households		Renter households	
	Number	Percent	Number	Percent
Less than \$000.				
\$000-\$000.				
\$000-\$000.				
\$000-\$000.				
\$000-\$000.				
Total.				
Median.				
Elderly Household Income Groups:				
Less than \$.				
\$000-\$000.				
\$000-\$000.				
\$000-\$000.				
\$000-\$000.				
Total.				

Incomes of those eligible to live in the proposed project, considering tax credits and availability of RA:
\$000-\$000
\$000-\$000

Source

C. Housing supply profile

1. Building permits issued for the last 10 years. The Housing Units Authorized by

Building Permits and Public Contracts (C-40 Construction Report), furnished by the Bureau of the Census, provides a list of permits issued in all reporting jurisdictions. This publication is printed monthly and annually. If available, the number of units which have been demolished over the last 5 years will be needed.

Example

Year	Town			County		
	Single family	Multifamily	Demol.	Single family	MultiFamily	Demol.
19 ____.						
19 ____.						
19 ____.						
19 ____.						
Through current year.						

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2. *Housing stock.* The study must include the number of units within the town and county (where available), both single family and multi-family, the number of mobile homes by tenure, along with the number of substandard units by tenure, based on the most recent census data. Occasionally, a situation will exist within a community where

a number of detached single family homes are standing vacant. How this condition may affect the rental market must be evaluated and discussed.

Example

Inventory Change Profile

	Single family	Multifamily	Mobile home	
			Own	Rent
1980 Stock				
1990 Stock				

	Annual	Percent
Change in Number of Units.		

3. *Existing rental housing.* The analyst must determine where the proposed project will fit into the present housing stock. To accomplish this, the analyst will survey the existing units and will discuss how they (a) would be comparable with the proposed project in overall appeal; (b) are less than desirable because of the age factor or upkeep; (c) are inconveniently located; (d) do not provide the appropriate bedroom mix for the community need, etc.

4. *Details of existing stock.*

a. Additional narrative which describes the rental stock and provides tenant characteristics may be included. The survey will include both subsidized and nonsubsidized rentals. In those communities containing too many rental properties to list, all subsidized and a representative number of conventional projects will be included. Those conventional projects which have rent levels comparable to the proposed project will be listed. Because elderly persons may reside in family designated projects, the analyst will need to list all existing units and not just the existing elderly units. Photographs of the comparables are required.

b. The analyst will explore the availability of individual Section 8 certificates with the local housing authority since they can be used on any project to bring the existing rents into an affordable range. For instance, 10 to 15 available Section 8 certificates in a community could have an influence on the determination for new units and the number should be reduced to correspond to this

availability. However, before automatically reducing the number of proposed units to match the number of available Section 8 units, the reason the certificates are available must be explored, (e.g., owners of non-Government subsidized units will not accept the certificates). (The bedroom sizes which the certificates cover must match the prospective bedroom sizes in the proposed project bedroom mix.)

c. The information needed in the survey must include the characteristics shown below. In conjunction with the survey, the analyst is expected to discuss the reasons for extended vacancies, either in individual developments or in the community in general. The data needed are:

Name of Project
No. of Units
Bedroom Mix
Amenities: (if available)
Drapes
Carpet
Type (i.e., family, elderly)
Year Built
Rent levels
Vacancies
Location
Central Cooling
Dishwasher
Garbage Disposal
TV Cable

IV. HOUSING DEMAND FORECASTS

The analyst must give a projection of the housing needs for a specified forecast period. The information should include the following as a minimum:

Sources of demand	Town renter	Market area renter
<i>New Households</i> (from the most recent census year plus 2-year projection)		
.20 of Households in Substandard Rental Units	+	+
Plus Demolition of Rental Stock	+	+
.20 of Households Experiencing Rent Overburden	+	+
Plus Vacancy (.05 of New Household Growth)	+	+
Total demand		
Number of Total Demand Determined Income Eligible (tax credit eligible, if applicable)		
Less Number of Units in Planning Stage (FmHA/HUD)	-	-
Net Demand		

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If a penetration percentage is used in the study analysis, explain how that particular percentage was chosen.

RECOMMENDED NUMBER BY UNIT

Size	One	Two	Three	Four

Names and positions of individuals in the community who provided information for the study:

- _____
- _____
- _____
- _____

[59 FR 6892, Feb. 14, 1994, as amended at 59 FR 49346, Sept. 28, 1994]

EXHIBIT A-9 TO SUBPART E OF PART 1944—ADDITIONAL INFORMATION TO BE SUBMITTED FOR RURAL RENTAL HOUSING (RRH) AND RURAL COOPERATIVE HOUSING (RCH) LOAN REQUESTS

1. Drawings and specifications, including any cost containment considerations and special design features for elderly or handicapped persons.
2. Updated cost estimates on Form FmHA or its successor agency under Public Law 103-354 1924-13, "Estimate and Certificate of Actual Cost," will be submitted by all applicants, along with the updated estimates of associated costs specified in exhibit A-7 of this subpart.
3. Information on the method of construction, the proposed contractor if a construction contract is to be negotiated, and the architectural, engineering and legal services included in the proposal.
4. Satisfactory evidence of review and approval of the proposed housing by applicable State and local officials whose approval is required by State or local laws, ordinances or regulations. This could be an indication of approval to proceed with the development of the project rather than final approval of plans and specifications.
5. If more than 12 months have transpired since the market analysis was completed, the State Director may require that it be updated if he/she determines it necessary.
6. For all projects containing over four units, the applicant must submit an Affirmative Fair Housing Marketing Plan for approval in accordance with §1901.203 of subpart E to part 1901 of this chapter. The plan must be prepared in a complete, meaningful, responsive and detailed manner.
7. If more than 90 days have transpired since the applicant submitted the dated financial statement, the State Director may

require a new one if he/she determines it necessary.

8. If there is any change in related assistance available to the applicant from other government agencies or in the interested parties as defined in §1944.205 of this subpart, it must be disclosed at this time.

9. Detailed operating budgets showing a schedule of proposed rental rates for the first year's operation and a typical year's operation. The first year's budget should show that the applicant has sufficient operating capital on hand or sufficient planned income to pay all operating costs and meet scheduled payments on debts during the planning and construction period prior to occupancy. The typical year's budget should show there will be ample income to pay essential operating costs, meet required debt payments and permit accumulation of required reserves. Form FmHA or its successor agency under Public Law 103-354 1930-7, "Multiple Family Housing Project Budget," and exhibit A-5 of this subpart (or similar forms) may be used for this purpose. The operating budgets should be updated if necessary just prior to loan approval.

a. The initial budgets should include an allowance of 10 percent for vacancies, non-payment of rent and contingency expenses. The allowance in subsequent year budgets may be adjusted to be consistent with the actual past experience in vacancy, non-payment of rent and contingency needed for the project.

b. The budgets should provide for accumulating a reserve at the rate of 1 percent per annum of the amount of the loan until a minimum reserve equal to 10 percent of the loan is reached. Budgets should not include an additional item for depreciation since the reserve account is to provide funds for this purpose.

c. All applicable taxes, including Federal and State income taxes, should be included in the budgets and separately identified. If the applicant considers itself tax-exempt, evidence of exemption must be included in the loan docket before the loan is closed. An eligible nonprofit organization should ordinarily be able to qualify for Federal income tax exemption under section 501(c) (4) of the Internal Revenue Code.

10. The applicant will submit all proposed agreements for architectural, engineering, and legal services.

11. A statement in narrative form outlining the proposed manner of management of the housing, such as whether by owner or by hired management firm or agent. Experience and other factors pertaining to the qualifications of the manager should be set forth and will be taken into consideration. If management will be performed by a hired management firm or agent, a copy of the proposed management agreement should be

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submitted. It must contain the clause stating that it is not in full force and effect until approved by FmHA or its successor agency under Public Law 103-354.

12. A management plan which sets forth clear and concise statements of policy concerning management and operation of the project in accordance with the requirements of paragraph V of exhibit B of subpart C to part 1930 of this chapter. Copies of the proposed application for occupancy, sample waiting lists, lease or rental agreement, and rules and regulations governing administration, occupancy and pet policies should be included. The management plan must be submitted in writing and the applicant must certify that it is in compliance with the requirements of subpart C to part 1930 of this chapter.

13. A schedule of any separate charges for the use of any related facilities and, in the case of congregate housing, a schedule of any separate charges for nonshelter services (such as meals, personal care and house-keeping). These schedules should be supported by appropriate operating budgets for services to be provided.

14. A satisfactory survey of the land to be given as security prepared by a licensed surveyor will be included in the loan docket. If necessary, a new survey will be obtained.

15. Form FmHA or its successor agency under Public Law 103-354 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts."

16. [Reserved]

17. Comments must be submitted in accordance with 7 CFR, part 3015, subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities." See RD Instruction 1940-J (available in any Rural Development office).

[53 FR 2159, Jan. 26, 1988, as amended at 53 FR 36268, Sept. 19, 1988; 54 FR 29332, July 12, 1989; 55 FR 13503, Apr. 11, 1990; 55 FR 29563, July 20, 1990. Redesignated at 56 FR 2245; 56 FR 65985, Dec. 20, 1991; 59 FR 6896, Feb. 14, 1994; 62 FR 25070, May 7, 1997; 62 FR 67224, Dec. 23, 1997]

**EXHIBIT A-10 TO SUBPART E OF PART
1944 [RESERVED]**

**EXHIBIT A-11 TO SUBPART E OF PART
1944—PROCESSING GUIDELINES FOR
LOANS FOR EQUITY TO AVERT PRE-
PAYMENT**

To apply for an equity loan to avert prepayment, the borrower should submit the following items in accordance with exhibit A-6 of this subpart and this exhibit:

1. Form SF-424.2 with a narrative discussion of the borrower's equity loan request,
2. Current Financial Statement,

3. Proposed budget showing anticipated rents to cover revised financing package, including updated figures on required reserve contributions and return on investment (if any).

4. Data on current tenants' income, rents and RA, and incomes of those on the waiting list to show that new rents will not displace or prevent occupancy by eligible tenants, unless sufficient RA is made available.

[58 FR 38925, July 21, 1993]

**EXHIBIT B TO SUBPART E OF PART 1944—
GUIDE LETTER FOR USE IN INFORM-
ING INTERIM LENDER OF FMHA OR
ITS SUCCESSOR AGENCY UNDER PUB-
LIC LAW 103-354'S COMMITMENT**

(Name and Address of Private Lender)

Dear Mr./Ms.:

(For Organizations)

Reference is made to a request from the
(Smith Housing Assoc.)

through
(John Smith),

its President, for interim financing from your firm to construct a housing facility at the interest rate and terms and conditions agreed upon as reflected in the attached letter.

(For Individuals)

Reference is made to a request for
(John Jones)

for interim financing from your firm to construct a rental housing facility at the interest rate and terms and conditions agreed upon as reflected in the attached letter.

This letter is to confirm certain understandings on behalf of the Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354.

Final drawings, specifications and all other contract documents have been prepared and approved, and the applicant is prepared to start construction. The applicant and FmHA or its successor agency under Public Law 103-354 have determined that the conditions of loan closing can be met. Funds have been obligated for the project.

FmHA or its successor agency under Public Law 103-354 has required the applicant to deposit \$_____ with your firm to be used before any interim loan funds. The applicant has proposed and FmHA or its successor agency under Public Law 103-354 has agreed that you may first advance any applicant funds on deposit, and then advance the proceeds of the interim loan in accordance with the terms and conditions stated in your attached letter to pay for construction and

other authorized and legally eligible expenses incurred by the applicant. It is understood, however, that advances of both the applicant's funds and the interim loan funds will be made only upon presentation of proper statements and partial payment estimates proposed by the builder and approved for payment by the consulting architect, applicant and FmHA or its successor agency under Public Law 103-354 servicing official.

We have scheduled the FmHA or its successor agency under Public Law 103-354 loan to be closed when construction to be financed with loan funds is substantially complete in accordance with the FmHA or its successor agency under Public Law 103-354 approved (contract documents), drawings and specifications, (except for minor punch list items), and the applicant provides evidence and a signed certification indicating that there are no unpaid obligations outstanding in connection with the project. At that time, funds not exceeding the FmHA or its successor agency under Public Law 103-354 loan amount will be available to pay off the amount of loan advances your lending institution has made for authorized approved purposes, including accrued interest to the date of closing.

FmHA or its successor agency under Public Law 103-354 cannot provide you with an unconditional letter of commitment guaranteeing FmHA or its successor agency under Public Law 103-354 loan closing. Factors such as noncompletion, default, unacceptable workmanship and marked deviation from approved drawings and specifications could prevent the FmHA or its successor agency under Public Law 103-354 loan from being closed.

These problems can be minimized by making a thorough review of the [contract documents]¹ and drawings and specifications, evaluating the qualifications and past performance of the builder, and obtaining an adequate corporate surety bond guaranteeing both payment and performance. If the builder is unable to provide a surety bond, we suggest that your lending institution consider making advances for partial payments to the builder [in accordance with the provisions of the construction contract]¹ based upon no less than 60 percent and no more than 90 percent of the value of acceptable work in place, less the aggregate of previous payments.

The following are additional safeguards to help assure FmHA or its successor agency under Public Law 103-354 loan closing:

1. We invite you or your representatives to accompany FmHA or its successor agency under Public Law 103-354 personnel during

construction inspections so that at least three or four joint inspections at critical points during construction, including the final inspection, can be made to help assure that construction is proceeding in accordance with the FmHA or its successor agency under Public Law 103-354 approved drawings and specifications.

2. FmHA or its successor agency under Public Law 103-354 will maintain its commitment in the amount of the obligated loan funds for a reasonable period of time after the expiration of any specified completion dates provided work on the project is progressing satisfactorily and any identified problems have been resolved.

3. FmHA or its successor agency under Public Law 103-354 will not arbitrarily abandon your lending institution in the event of default. If the contractor defaults, FmHA or its successor agency under Public Law 103-354 will attempt to provide financial assistance to the applicant in accordance with our administrative procedures and lending requirements if a new contractor can complete the project for a total cost within the security value of the project. If this is not possible or if the FmHA or its successor agency under Public Law 103-354 loan applicant becomes unable or unwilling to continue with the project, FmHA or its successor agency under Public Law 103-354 will attempt to provide financial assistance to any eligible applicant (subject to the availability of funds, our administrative procedures, and our lending requirements) to purchase the completed project from your lending institution.

4. FmHA or its successor agency under Public Law 103-354 is aware that circumstances such as subsurface ground conditions and change orders necessitated by required changes in the work to be performed may cause cost increases after FmHA or its successor agency under Public Law 103-354 loan approval and the obligation of FmHA or its successor agency under Public Law 103-354 loan funds. When justified, FmHA or its successor agency under Public Law 103-354 may make subsequent loans when necessary to help cover the eligible costs, provided additional loan funds are available, the change orders were approved by FmHA or its successor agency under Public Law 103-354, the increased costs are legitimate and are for authorized loan purposes, and the total cost of the project is within its security value. Your assistance to the applicant is appreciated.

Sincerely,

State Director

¹These words may be omitted for projects constructed by the owner-builder method of construction with a construction contract.

[53 FR 2159, Jan. 26, 1988, as amended at 56 FR 2247, Jan. 22, 1991; 59 FR 6897, Feb. 14, 1994]

EXHIBIT C TO SUBPART E OF PART 1944—
ARTICLES OF INCORPORATION FOR
RENTAL OR COOPERATIVE ORGANIZA-
TIONS (NOT FOR PROFIT)

We, the undersigned, incorporators, hereby associate ourselves together to form and establish a (corporation) (cooperative) not for profit under the laws of the State of _____.

First: The name of the (corporation) (cooperative) is _____.

Second: The location of its principal place of business in this State is _____, _____ County.

Third: The location of its registered office in this State is _____, _____ County.

Fourth: The name and address of its resident agent in this State is _____ County.

Fifth: This (corporation) (cooperative) is organized not for profit under _____, and the objects and purposes to be transacted and carried on are to promote the general social welfare of the community and for that purpose:

To acquire, construct, provide, and operate (rental) (cooperative) housing and related facilities suited to the special needs and living requirements of eligible occupants as determined by FmHA or its successor agency under Public Law 103-354 regulations, without regard to race, color, religion, sex, age, handicap, marital or familial status or national origin;

To acquire, improve, and operate any real or personal property or interest or right herein or appurtenant thereto;

To sell, convey, assign, mortgage, lease any real and personal property;

To borrow money and to execute such evidence of indebtedness and such contracts, agreements, and instruments as may be necessary, and to execute and deliver any mortgage, deed of trust, assignment of income, or other security instrument in connection therewith; and to do all things necessary and appropriate for carrying out and exercising the foregoing purposes and powers.

Sixth: The number of directors shall be prescribed in the bylaws, but shall not be less than five nor more than nine.¹

Seventh: The (corporation) (cooperative) formed hereby shall have no capital stock. It shall be composed of members rather than shareholders. The conditions and regulations

of membership and the rights or other privileges of the classes of members shall be determined and fixed by the bylaws.

Eighth: (Rental only) The corporation is not organized for pecuniary profit and shall have no power to declare dividends. No part of its net earnings shall inure to the benefit of any member, director, or individual. The balance, if any, of all money received by the corporation from its operations, after payment in full of all operating expenses, debts, and obligations of the corporation of whatsoever kind and nature as they become due shall be used to make advance payments on a _____ owed by the corporation, to lower the lease-rental charge to occupants of the housing, to provide additional housing and related facilities, or for some related purpose.

Eighth: (Cooperative only) The cooperative is not organized for pecuniary profit and shall have no power to declare dividends. The balance, if any, of all money received by the cooperative from its operations, after payment in full of all operating expenses, debts, and obligations of the cooperative of whatsoever kind and nature as they become due, shall accumulate in an interest-bearing account but be equally assigned to each member as patronage capital.

Ninth: The name and place of residence (post office address) of each of the incorporators and initial directors until the first annual meeting:

Incorporators

Directors

Tenth: (Rental only) In the event of dissolution of this corporation, or in the event it shall cease to carry out the objectives and purposes herein set forth, all business, property, and assets of the corporation shall go and be distributed to one or more such nonprofit corporations or municipal corporations as may be selected by the board of directors of this corporation, to be used for and devoted to the purpose of carrying on a nonprofit housing project for such rural residents or other purposes to promote the general social welfare of the community. In no event shall any of the assets or property, in the event of dissolution thereof, go or be distributed to members, either for the reimbursement of any sum subscribed, donated, or contributed by such members or for any other purposes, provided that nothing herein shall prohibit the corporation from paying its just debts.

Tenth: (Cooperative only) In the event of dissolution of this cooperative, or in the event it shall cease to carry out the objectives and purposes herein set forth, all business, property, and assets of the cooperative, except members' patronage capital and

¹If the statute under which the cooperative housing project is to be incorporated will permit, it is preferable to state here the minimum number of directors. The actual number can then be stated in the bylaws which are more easily amended if it becomes necessary to change the number.

membership fees, shall be used for providing low income rental housing or other purposes to promote the general welfare of the community. In no event shall any of the assets or property, in the event of dissolution thereof, go or be distributed to members, except that the membership fee and money accrued to members in their patronage capital accounts shall be paid to members prior to conversion or satisfaction of the Government's debt.

Eleventh: (Cooperative only) At any time prior to dissolution the member wishes to terminate membership in the cooperative, money which has accrued in the member's patronage capital account and the member's membership fee shall be paid to the member provided the member's occupancy account is not delinquent and that any other charges to which the member is liable are paid.

Twelfth: The duration of the existence of this corporation shall be perpetual.¹

IN TESTIMONY WHEREOF, We have here unto subscribed our names on _____ 19 _____.

(Insert acknowledgement or other form if required by State law.)

[56 FR 2247, Jan. 22, 1991]

EXHIBIT D TO SUBPART E OF PART 1944—
BYLAWS (EXCEPT COOPERATIVE)

(Sample)

BYLAWS OF
A NONPROFIT CORPORATION

Article I

OFFICE

Section 1.01. *Principal Office.*

The principal office of the corporation in the State of _____, shall be located at _____, County of _____ Section 1.02. Registered Office and Agent. The corporation shall have and continuously maintain in the State of _____ a registered office and a registered agent whose office is identical with such registered office.

Article II

MEMBERS

Section 2.01. *Eligibility for membership.*

The corporation shall have one class of members. Members may be individuals or organizations. Any legally competent person of good reputation who resides in the town of _____ or in the surrounding trade area,

¹Duration should be perpetual, or long enough to cover the period of the loan plus 5 years.

applies for membership, and pays the required membership fee shall be eligible.

Section 2.02. *Approval of Applications.*

All applications for membership shall be approved at: (1) Any special or regular meeting of the board of directors, when a quorum is present, by a majority vote of the board members or (2) by a majority vote of the existing membership present at any annual or special meeting held in accordance with Article III herein.

Section 2.03. *Voting Rights.*

Each member shall be entitled to one vote on each matter submitted to a vote of the members.

Section 2.04. *Termination of Membership.*

A member may be suspended or expelled, for cause, by the vote of not less than three-fourths of the members present at a meeting of the members, provided notice of such proposed action shall have been duly given in the notice of meeting and provided the member has been informed in writing of the charges preferred against the member at least ten days before such meeting. The members shall be given an opportunity to be heard at such meeting. The members of the board, by a majority vote of those present at any regularly constituted meeting, may terminate the membership of any member who becomes ineligible for membership and may suspend or expel any member who shall be in default with respect to any financial obligation to the corporation.

Section 2.05. *Resignation.*

Any member may resign by filing a written resignation with the secretary.

Section 2.06. *Reinstatement.*

Upon written request signed by a former member and filed with the secretary, the board may reinstate such former member to membership upon such terms as the board may deem appropriate.

Section 2.07. *Transfer of Membership.*

Membership in this corporation is not transferable or assignable.

Section 2.08. *Membership—Fees.*

The membership fee shall be \$ _____ or such other amount as may be fixed by the members at any annual meeting or at any special meeting called for the purpose. No person shall attain membership before paying the treasurer the membership fee.

Section 2.09. *Membership—Liability for Corporation's Obligations.*

Fully paid members shall not be liable for any debts or obligations of the corporation and shall not be subject to any assessment; but the members at any annual meeting or at any special meeting called for the purpose, may fix reasonable annual dues to become effective after not less than 30 days' notice to all members of such action.

Section 2.10. *Membership—Minimum Number.*

The board will make all reasonable efforts to maintain a broad community-wide membership of not less than 25 members at any time.

Section 2.11. *Membership—Residence.*

A majority of the members shall be residents of the community where the housing is or will be located.

Article III

MEETINGS OF MEMBERS.

Section 3.01. *Annual Meeting.*

An annual meeting of the members shall be held at _____, on the _____ of the month of _____ each year, beginning with the year 19____, at the hour of _____ o'clock, for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in said State, such meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting, or at any adjournment thereof, the board shall cause the election to be held at a special meeting of the members as soon thereafter as convenient.

Section 3.02. *Special Meetings.*

Special meetings of the members may be called by the president, the board, or not less than one-tenth of the members.

Section 3.03 *Place of Meeting.*

The board of directors may designate any place within or not more than _____ miles from _____ as the place for an annual meeting or for any special meeting called by the board. If no designation is made or if a special meeting be otherwise called, the place of meeting shall be the registered office of the corporation in said State.

Section 3.04. *Notice of Meetings.*

Written or printed notice stating the place, day, and hour of any meeting of members shall be delivered either personally or by mail, to each member entitled to vote at such meeting, not less than seven or more than thirty days before the date of such meeting, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting. In case of a special meeting or when required by statute of these bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the member at the address as it appears on the records of the corporation, with postage thereon prepaid.

Section 3.05. *Informal Action by Members.*

Any action required by law to be taken at a meeting of the members, or any action which may be taken at a meeting of the members, may be taken without a meeting

upon written consent or approval of all the members, setting forth the action so taken.

Section 3.06. *Quorum.*

At such meeting, a quorum shall consist of 30 percent of the members, or twice the number of directors, whichever is greater. If a quorum is not present at any meeting of members, a majority of the members present may adjourn the meeting from time to time without further notice.

Section 3.07. *Proxies.*

(a) At any meeting of the members, a member entitled to vote may vote by proxy executed in writing by the member. No proxy shall be valid after eleven months from the date of its execution. A proxy may be canceled by notice executed by the member with like formality and delivered to the secretary.

(b) At each meeting of the members, every member shall be entitled to vote in person or by proxy and shall be entitled to cast one vote. The votes for directors shall be by ballot. Only the person in whose name membership is standing in the books of the corporation on the day of such meeting shall be entitled to vote in person or by proxy.

(c) For any person to represent a member by proxy, such person must submit a power of attorney to the secretary of the board for examination at least one hour before the time of meeting. When the secretary has certified the power of attorney is in good order, the proxy holder shall have the right to do any and all things which might be done by the member were the member present in person, which right shall include the establishment of a quorum and the organizing of any meeting.

Article IV

BOARD OF DIRECTORS

Section 4.01. *General Powers.*

The affairs of the corporation shall be managed by its board of directors.

Section 4.02. *Number, Tenure, and Qualifications.*

The number of directors shall be _____. The directors elected at the annual meeting to succeed the directors named in the Articles of Incorporation shall be elected for staggered terms of three, two, and one year. As the terms of such directors expire, their successors shall be elected for terms of three years and until their successors are elected and have qualified. Directors shall be members of the corporation and residents of the community where the housing is or will be located. Of the total number of directors, at least five must be among the leaders in such community.

Section 4.03. *Regular Meetings.*

A regular annual meeting of the board shall be held, without other notice than these bylaws, immediately after and at the same place as the annual meeting of the

members. The board may provide by resolution the time and place, within or not more than _____ miles from _____ for holding of additional regular meetings of the board without other notice than such resolution.

Section 4.04. *Special Meetings.*

Special meetings of the board may be called by or at the request of the president and shall be called by the secretary at the request of any two directors. The authorized person or persons calling a special meeting of the board may fix any place within or not more than _____ miles from _____ as the place for holding such meeting.

Section 4.05. *Notice.*

Notice of any special meeting of the board shall be given at least two days previously thereto by written notice delivered personally, or four days notice sent by mail or telegram, to each director at the director's address as shown by the records of the corporation. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any director may waive notice of any meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. The business to be transacted at the meeting need not be specified in the notice or waiver of notice of such meeting, unless specifically required by law or these bylaws.

Section 4.06. *Quorum.*

A majority of the board shall constitute a quorum for the transaction of business at any meeting of the board; but if less than a majority of the directors are present at said meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

Section 4.07. *Manner of Acting.*

The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board, unless the act of a greater number is required by law or by these bylaws. The board may also act by written consent of all the directors of the corporation setting forth the action taken.

Section 4.08. *Vacancies.*

Any vacancy occurring in the board shall be filled by the board until the next meeting of the members and until a successor has been elected by the members to fill a vacancy. Such person shall be elected for the unexpired term of office of the predecessor in office.

Section 4.09. *Compensation.*

Directors shall not receive any compensation for their services as directors.

Section 4.10. *Director—Absence From Meetings.*

Any director who is absent from _____ consecutive meetings without excuse satisfactory to the board shall be deemed to have surrendered the office as director.

Section 4.11. *Directors—Residuary Powers.*

The board shall have the powers and duties necessary or appropriate for the administration of the affairs of the corporation. All powers of the corporation except those specifically granted or reserved to the members by law, the articles of incorporation, or these bylaws shall be vested to the board.

Section 4.12. *Directors—Removal From Office.*

A director may be removed from office, for cause, by the vote of not less than three-fourths of the members present at a meeting of the members, provided notice of such proposed action shall have been duly given in the notice of the meeting and provided the director has been informed in writing of the charges preferred against the director at least 10 days before such meeting. The director involved shall be given an opportunity to be heard at such meeting. Any vacancy created by the removal of a director shall be filled by a majority vote, which may be taken at the same meeting at which such removal takes place.

Article V

OFFICERS

Section 5.01. *Officers.*

The officers of the corporation shall be a president, a vice president, a secretary, and a treasurer. The board may elect or appoint such other officers as it shall deem desirable, such officers to have the authority and perform the duties prescribed, from time to time, by the board. The offices of secretary and treasurer may be combined and held by one person.

Section 5.02. *Election and Term of Office.*

(a) The officers of the corporation specified in Section 5.01 shall be elected from the membership of the board by the board at its annual meeting or as soon thereafter as feasible. New offices may be created and filled at any meeting of the board. Each officer shall hold office until the next annual election of directors and until a successor shall have been duly elected and shall have qualified.

(b) The term of office shall be one year. Election of officers shall take place at the annual board meeting and shall be by ballot cast by qualified directors. A plurality of votes cast shall elect.

Section 5.03. *Removal.*

Any officer elected or appointed by the board may be removed by the board by two-thirds vote of the remaining directors whenever in its judgment the best interests of the corporation would be served thereby, but

RHS, RBS, RUS, FSA, USDA

such removal shall be without prejudice to the contract rights, if any, of the officer so removed.

Section 5.04. *Vacancies.*

A vacancy in any office because of death, resignation, removal, disqualification, or otherwise, may be filled by the board by majority vote for the unexpired portion of the term.

Section 5.05. *President.*

The president shall be the principal executive officer of the corporation and shall in general supervise and control all the business and affairs of the corporation. The president shall preside at all meetings of the members and of the board. The president may sign, with attestation of the secretary or any other proper officer of the corporation authorized by the board, any deeds, mortgages, bonds, contracts, or other instruments which the board authorizes to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the board of these bylaws or statutes to some other officer or agent of the corporation and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the board from time to time.

Section 5.06. *Vice President.*

In the absence of the president or in the event of an inability or refusal to act, the vice president shall perform the duties of the president and, when so acting, shall have all the powers of and be subject to all restrictions upon the president. Any vice president shall perform such other duties as from time to time may be assigned by the president of the board.

Section 5.07. *Treasurer.*

The treasurer shall give a bond for the faithful discharge of duties in such sum and with such surety or sureties as the board shall determine. The treasurer shall have charge and custody of and be responsible for all funds and securities of the corporation; receive and give receipts for moneys due and payable to the corporation from any source whatsoever, deposit all such moneys in the name of the corporation in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of Article VIII of these bylaws; and in general perform all duties incident to the office of treasurer and such other duties as from time to time may be assigned by the president or the board.

Section 5.08. *Secretary.*

The secretary shall keep the minutes of the meeting of the members and the board in one or more books provided for that purpose, see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; be custodian of and see that the seal of the corporation is affixed to all documents the execution of which on behalf of the corporation under its seal is duly

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authorized in accordance with the provisions of these bylaws; keep a register of the post office address of each member, which shall be furnished to the secretary by such member; and in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned by the president or the board.

Article VI

ORDER OF BUSINESS

Section 6.01. *Order of Business.*

The order of business at any regular or special meeting of the members or the board shall be:

- (a) Reading and approval of any unapproved minutes.
- (b) Reports of officers and committees.
- (c) Unfinished business.
- (d) New business.
- (e) Adjournment.

Section 6.02. *Parliamentary Procedure.*

On questions of parliamentary procedure not covered in these bylaws, a ruling by the president shall prevail.

Article VII

COMMITTEE

Section 7.01. *Committees of Directors.*

The board of directors, by resolution adopted by a majority of the directors in office, may designate one or more committees, each of which shall consist of one or more directors, which committees, to the extent provided in said resolution, shall have and exercise the authority of the board in the management of the corporation; but the designation of such committees and the delegation thereto of authority shall not operate to relieve the board, or any individual director, of any responsibility imposed upon the board, or any individual director, by law.

Section 7.02. *Other committees.*

Other committees not having and exercising the authority of the board in the management of the corporation may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. Except as otherwise provided in such resolution, members of each such committee shall be members of the corporation, and the president of the corporation shall appoint the member thereof. Any member thereof may be removed by the person or persons authorized to appoint such member whenever in their judgment the best interest of the corporation shall be served by such removal.

Section 7.03. *Term of Office.*

Each member of a committee shall continue as such until the next annual meeting of the members of the corporation and until a successor is appointed, unless the committee shall be sooner terminated, or unless

such member to be removed from such committee, or unless such member shall cease to qualify as a member thereof.

Section 7.04. *Chairman.*

One member of each committee shall be appointed chairman by the persons authorized to appoint the members thereof.

Section 7.05. *Vacancies.*

Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

Section 7.06. *Quorum.*

Unless otherwise provided in the resolution of the board of directors designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

Section 7.07. *Rules.*

Each committee may adopt rules for its own government not inconsistent with these bylaws or with rules adopted by the board of directors.

Article VIII

CONTRACTS, CHECKS, DEPOSITS, AND FUNDS

Section 8.01. *Contracts.*

The board may authorize any officer or officers, agent or agents of the corporation, in addition to the officers so authorized by these bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation; and such authority may be general or confined to specific instance.

Section 8.02. *Checks, Drafts, etc.*

All checks, drafts, or orders for the payment of money, notes, or other evidence of indebtedness issued in the name of the corporation shall be signed by the officer or officers, agent or agents of the corporation, and in a manner as shall from time to time be determined by resolution of the board. In the absence of determination by the board, these instruments shall be signed by the treasurer and countersigned by the president of the corporation.

Section 8.03. *Deposits.*

All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the board may select.

Section 8.04. *Gifts.*

The board may accept on behalf of the corporation any contribution, gift, bequest, or devise for the general purposes or for any special purposes of the corporation.

Article IX

CERTIFICATES OF MEMBERSHIP

Section 9.01. *Certificates of Membership.*

The board may provide for the issuance, and determine the form of certificates evidencing membership in the corporation. Such certificates shall be signed by the president and the secretary, sealed with the seal of the corporation, and consecutively numbered. The name and address of each member and the date of issuance of the certificate shall be entered on the records of the corporation. If any certificate becomes lost, mutilated or destroyed, a new certificate may be issued upon such terms and conditions as the board may determine.

Section 9.02. *Issuance of Certificates.*

When a member has been elected to membership and has paid any dues that may then be required, a certificate of membership shall be issued in his or her name and delivered to the member by the secretary.

Article X

BOOKS AND RECORDS

The corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, the board, and committees having any of the authority of the board of directors, and shall keep at the registered or principal office a record giving the names and addresses of the members. All books and records of the corporation may be inspected by any member, or member's agent or attorney, for any proper purposes at any reasonable time. The board shall cause an audit of the records of the corporation to be made each year by a competent auditor.

Article XI

FISCAL YEAR

The fiscal year of the corporation shall begin on the first day of January and end on the last day of December in each year.

Article XII

SEAL

The board shall provide a corporate seal, which shall be in the form of a circle and shall have inscribed thereon the name of the corporation and the words, "corporate seal."

Article XIII

WAIVER OF NOTICE

Whenever any notice is required to be given under the provisions of the statutes of said State or the articles of incorporation or the bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled thereto, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Article XIV

REPEAL OR AMENDMENT OF BYLAWS

Section 14.01. These bylaws may be repealed or amended by a majority vote of the members present at any annual meeting of the members, or at any special meeting of the members called for such purpose, at which a quorum is present: provided, however, no such action shall change the purposes of the corporation so as to impair its rights and powers under the laws of said State, or to waive any requirements of bond or any provision for the safety and security of the property and funds of the corporation or its members or to deprive any member without any express assent of rights, privileges, or immunities then existing. Notice of any amendment to be offered at any meeting shall be given not less than 7 nor more than 30 days before such meeting and shall set forth such amendment.

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned secretary of the corporation identified in the foregoing bylaws does hereby certify that the foregoing bylaws were duly adopted by the members of said corporation, as bylaws of said corporation, on the ____ day of ____, 19____ at a duly called and constituted meeting of the members, and that they do now constitute the bylaws of said corporation.

Secretary

(Corporate Seal)

[53 FR 2159, Jan. 26, 1991, as amended at 56 FR 2248, Jan. 22, 1991]

EXHIBIT D-1 TO SUBPART E OF PART
1944—BYLAWS (COOPERATIVE)

Bylaws of

(a nonprofit cooperative corporation)

Article I

OFFICE

Section 1.01. *Principal office.* The principal place of business of the cooperative in the State of ____ shall be located at ____, County of ____.

Section 1.02. *Registered office and agent.*

Article II

MEMBERS

Section 2.01. *Eligibility for membership during cooperative's formation.* Any natural person who is approved by the cooperative under its rules and regulations by the board of directors shall be eligible for membership, provided that he/she executes a Subscription Agreement and Occupancy Agreement in the

usual form employed by the cooperative covering a specific unit in the housing project.

Section 2.02. *Approval of Applications for Membership after the cooperative's formation.*

All applications for membership received after the cooperative has been established and in operation shall be approved at any special or regular meeting of the board of directors, when a quorum is present, by a majority vote of the board members.

Section 2.03. *Membership certificates.* The board may provide for the issuance, and determine the form of, certificates evidencing membership in the cooperative. Such certificates shall state that the cooperative is organized under the laws of the State of ____, the cooperative's lien rights against such membership as set forth in these Bylaws, shall be signed by the president and the secretary, sealed with the seal of the cooperative, and consecutively numbered. The name and address of each member and the date of cooperative. If a certificate becomes lost, mutilated, or destroyed, a new certificate may be issued upon such terms and conditions as the board may determine.

Section 2.04. *Lien.* The cooperative shall have a lien on the outstanding memberships in order to secure payment of any sums which shall be due or become due from the holders for any reason whatsoever, including any sums due under any occupancy agreements.

Section 2.05. *Voting rights.* Each member shall be entitled to one vote on each matter submitted to a vote of the members.¹

Section 2.06. *Patronage capital.* All funds accruing to the cooperative during the year, above and beyond the costs and expenses of operating the cooperative, shall be assigned to each member on the books of the cooperative as patronage capital at the end of each fiscal year. These patronage capital funds may not be removed from the patronage capital account except in payment to members upon termination of membership. Any member not wishing to renew the Occupancy Agreement will be entitled to receive the patronage capital assigned to the member on the books of the cooperative. Likewise, members terminated because of violation of these bylaws may receive his/her patronage capital pursuant to provisions of section 2.07.

Section 2.07. *Termination of membership.* A member may be suspended or expelled, for violation of rules set forth in the Occupancy Agreement or these bylaws, by the vote of not less than a majority of the board of directors, provided the member has been informed in writing of the charges preferred against the member at least ten days before such meeting. However, the cooperative shall

¹In the case of joint membership, each member shall be entitled to cast a one-half vote.

not evict any member except by judicial action pursuant to State or local law and in accordance with the requirements of the Farmers Home Administration or its successor agency under Public Law 103-354 Tenant Grievance and Appeals Procedure. The member shall be given an opportunity to be heard at such meeting. Upon termination of membership rights under the Occupancy Agreement, the member shall be required to deliver promptly to the cooperative his/her membership certificate and Occupancy Agreement endorsed as required by the cooperative. The retiring member then shall be entitled to receive the amount determined in accordance with the provisions of section 2.10 less the following amounts (the determination of such amounts by the cooperative to be conclusive):

a. Any amounts due to the cooperative from the member under the Occupancy Agreement;

b. The cost or estimate cost of all deferred maintenance, including painting, redecorating, floor finishing, and such repairs and replacements as are deemed necessary by the cooperative to place the dwelling unit in suitable condition for another occupancy; and

c. Legal and other expenses incurred by the cooperative in connection with the default of such member. In the event the retiring member fails, within a 10-day period after demand, to deliver to the cooperative his endorsed membership certificate, the membership certificate shall be deemed to be canceled and may be reissued by the cooperative to a new member.

Section 2.08. *Resignation.* Any member may choose not to renew the Occupancy Agreement by notifying the cooperative 4 months in advance of the renewal date.

Section 2.09. *Transfer of membership.* Membership in this cooperative is not transferable or assignable except to the cooperative unless, upon death of a member, his/her membership in the cooperative passes by will or intestate distribution to a member of the immediate family. This is conditioned upon the person's eligibility and approval for membership according to FmHA or its successor agency under Public Law 103-354 regulations and by his/her assuming in writing the terms of the Subscription Agreement and Occupancy Agreement within 60 days after member's death and payment of such debts.

Section 2.10. *Transfer value.* Whenever a membership is transferred to the cooperative, the term *transfer value* shall mean the sum of:

a. The membership fee paid by the member on the books of the cooperative, and

b. The amount of the patronage capital which has accrued to the member during his/her period of membership as shown on the books of the cooperative.

Section 2.11. *Subscription fees.* All subscription funds shall be deposited promptly without deduction in a special account or accounts of the cooperative as escrow or trustee for the subscribers membership. These funds shall not be corporate funds, but shall be held solely for the benefit of the subscribers until transferred to the account of the cooperative as hereinafter provided. Such special account or accounts shall be established with a banking institution where deposits are insured by an agency of the Federal Government. Such funds shall be subject to withdrawal, or transfer to the account of the cooperative, or disbursed in a manner directed by the cooperative only upon certification by the president and secretary of the cooperative that:

(a) The subscription agreement of a named applicant has been terminated pursuant to its terms and such withdrawal is required to repay the amount paid by him under such agreement; or

(b) A sufficient number of applicants for _____ dwelling units has not been established and such withdrawal is required to repay established applicants the amounts paid by them; or

(c) Applicants for _____ dwelling units have signed subscription agreements, have been approved as to their eligibility by the board of directors, and have made at least a downpayment on their subscription (membership) fee. If these requirements have been met and the mortgage loan has been scheduled for closing, the entire amount of the funds in the subscription escrow account may be transferred to the cooperative which shall at that time deliver membership certificates to all members.

Article III

MEETINGS OF MEMBERS.

Section 3.01. *Annual meeting.* An annual meeting of the members shall be held at _____ on the _____ of the month of _____ each year, beginning with the year 19____ at the hour of _____ o'clock, ??m., for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in said State, such meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting, or at any adjournment thereof, the board shall cause the election to be held at a special meeting of the members as soon thereafter as convenient.

Section 3.02. *Special meetings.* Special meetings of the members may be called by the president, the board or not less than one-fourth of the members.

Section 3.03. *Place of meeting.* The board of directors may designate any place within or

not more than _____ miles from _____ as the place for an annual meeting or for any special meeting called by the board.,

Section 3.04. *Notice of meetings.* Written or printed notice stating the place, day, and hour of any meeting of members shall be delivered either personally or by mail, to each member entitled to vote at such meeting, not less than ten or more than twenty days before the date of such meeting, by or at the direction of the president, or the Secretary, or the officers or persons calling the meeting. In case of a special meeting or when required by statute of these bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the member at the address as it appears on the records of the cooperative, with postage thereon prepaid.

Section 3.05. *Informal action by members.* Any action required by law to be taken at a meeting of the members, or any action which may be taken at a meeting of the members, may be taken without a meeting upon written consent or approval of all the members, setting forth the action so taken.

Section 3.06. *Quorum.* At such a meeting a quorum shall consist of 40 percent² of the members, or twice the number of directors, whichever is greater. If a quorum is not present at any meeting of members, a majority of the members present may adjourn the meeting from time to time without further notice.

Section 3.07. *Proxies.* (a) At any meeting of the members, a member entitled to vote may vote by proxy executed in writing by the member. No proxy shall be valid after eleven months from the date of its execution. A proxy may be cancelled by notice executed by the member with like formality and delivered to the secretary.

(b) At each meeting of the members, every member shall be entitled to vote in person or by proxy and shall be entitled to cast one vote. The votes for Directors shall be by ballot. Only the person in whose name membership is standing in the books of the cooperative on the day of such meeting shall be entitled to vote in person or by proxy. If the membership is jointly owned, co-members are limited to one-half vote each.

(c) For any person to represent a member by proxy, such person must submit a power of attorney to the secretary of the board for examination at least one hour before the time of meeting. When the secretary has certified the power of attorney is in good order,

the proxy holder shall have the right to do any and all things which might be done by the member were the member present in person, which right shall include the establishment of a quorum and the organizing of any meeting.

Article IV

BOARD OF DIRECTORS

Section 4.01. *General powers.* The affairs of the cooperative shall be managed by its board of directors.

Section 4.01. *Powers and duties.* The board of directors shall have all the powers and duties necessary for the administration of the affairs of the cooperative and may do all such acts and things as are not by law or by these bylaws directed to be exercised and done by the members. The powers of the board of directors shall include but not be limited:

a. To accept or reject all applications for membership and admission to occupancy of a dwelling unit in the cooperative housing project, either directly or through an authorized representative;

b. To establish monthly occupancy charges, subject to approval of FmHA or its successor agency under Public Law 103-354, as provided for in the Occupancy Agreement and based on an operating budget formally adopted by the board;

c. To engage an agent or employees, subject to the approval of FmHA or its successor agency under Public Law 103-354, for the management of the project under such terms as the board may determine;

d. To authorize the recording of patronage capital assignments on the cooperative's books to members;

e. To terminate membership and occupancy rights for cause; and

f. To promulgate such rules and regulations pertaining to use and occupancy of the premises as may be deemed proper and are consistent with these bylaws and the Certificate of Incorporation and with any requirements of FmHA or its successor agency under Public Law 103-354 while mortgagee.

The affairs of the cooperative shall be managed by its board of directors.

Section 4.02. *Number and qualifications.* The board of directors shall be composed of _____ persons, all of whom shall be members of the cooperative.³

Section 4.03. *Election and term of office.* The term of the directors named in the Certificate of Incorporation shall expire when their successors have been elected at the first annual meeting or any special meeting called

²For large organizations, a smaller figure may be used if it will not result in a quorum of less than 20 members.

³Number of directors must be not less than 5 and must be selected by a procedure that insures that the interest of minorities and woman are adequately represented.

for that purpose. For a board of five (5) directors, the first annual meeting of the members the term of office of two (2) directors shall be fixed for two (2) years, and the term of office of one (1) director shall be fixed at (1) year. At the expiration of the initial term of office of each respective director, his/her successor shall be elected to serve a term of office for three (3) years.

The directors shall hold office until their successors have been elected and hold their first meeting. (If a larger board of directors is contemplated, the terms of office should be established in a similar manner so that they will expire in different years.) The term of any director who becomes more than 30 days delinquent in payment of his occupancy charges shall be automatically terminated and the remaining directors shall appoint his successor as provided in §4.11.

Section 4.04. *Organization meeting.* The first meeting of a newly elected board of directors shall be held within ten (10) days of election at such place as shall be fixed by the directors at the meeting at which such directors were elected. No notice shall be necessary to the newly elected directors in order legally to constitute such meeting, providing a majority of the whole board shall be present.

Section 4.05. *Regular Meetings.* Regular meetings of the board of directors shall be held each month at such time and place within _____ miles of _____. Notice of regular meetings of the board of directors shall be given to each director, personally or by mail, telephone or telegraph, at least 5 days prior to the day named for such meeting.

Section 4.06. *Special meetings.* Special meeting of the board may be called by or at the request of the president and shall be called by the secretary at the request of any two directors on three days notice. Such notice shall be by mail, telephone or telegraph and shall state the time, place (as provided below) and purpose of meeting. The authorized person or persons calling a special meeting of the board may fix any place within or not more than _____ miles from _____ as the place for holding such meeting.

Section 4.07. *Waiver of notice.* Before or at any meeting of the board of directors, any director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the given of such notice. Attendance by a director at any meeting of the board shall be a waiver of notice by him/her of the time and place thereto. If all directors are present at any meeting of the board, no notice shall be required and any business may be transacted at such meeting.

Section 4.08. *Quorum.* A majority of the board shall constitute a quorum for the transaction of business at any meeting of the board; but if less than a majority of the directors is present at said meeting, a major-

ity of the directors present may adjourn the meeting from time to time without further notice.

Section 4.09. *Fidelity Bonds.* The board of directors shall require that all officers and employees of the cooperative handling or responsible for cooperative or trust funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the cooperative.

Section 4.10. *Manner of acting.* The act of a majority of the directors at a meeting at which a quorum is present shall be the act of the board, unless the act of a greater number is required by law or by these bylaws. The board may also act by written consent of all the directors of the cooperative setting forth the action taken.

Section 4.11. *Vacancies.* Any vacancy occurring on the board shall be filled by the board until the next meeting of the members and until a successor has been elected by the members to fill a vacancy. Such person shall be elected for the unexpired term of office of the predecessor in office.

Section 4.12 *Directors—removal from office.* A director may be removed from office for violation of these bylaws or rules set forth in the Occupancy Agreement, by the vote of not less than three-fourths of the members present at a meeting of the members, provided notice of such proposed action shall have been duly given in the notice of the meeting and provided the director has been informed in writing of the charges preferred against the director at least 10 days before such meeting. The director involved shall be given an opportunity to be heard at such meeting. Any vacancy created by the removal of a director shall be filled by a majority vote, which may be taken at the same meeting at which such removal takes place.

Section 4.13. *Compensation.* Directors shall not receive any compensation for their services as directors.

Section 4.14. *Directors—absence from meetings.* Any director who is absent from _____ consecutive meetings without excuse satisfactory to the board shall be deemed to have surrendered the office of director.

Section 4.15. *Directors—Residuary Powers.* The board shall have the powers and duties necessary or appropriate for the administration of the affairs of the cooperative. All powers of the cooperative except those specifically granted or reserved to the members by law, the Articles of Incorporation, or these bylaws shall be vested in the board.

Section 4.16. *Adviser to the board.* The adviser to the board will be a member (or members) of the community who is not a member of the cooperative. In that capacity, the individual will be responsible for maintaining regular contacts with the board as well as being available to respond to special needs of the board at mutually agreeable times. The adviser will guide the board in its role of

self-manager until such time as the adviser and FmHA or its successor agency under Public Law 103-354 determine that such close guidance is no longer necessary, usually not to exceed 2 years. At that time, the adviser will continue to counsel the board as appropriate. If it is apparent to the adviser, during this second phase of converting to self-management, that the cooperative is unable to assume such a responsibility, the adviser will again establish the close supervision required in the first phase of operation. The ultimate goal of the adviser and the board is to achieve self-management for the cooperative. If this goal cannot be realized within a timeframe determined during the first, or subsequent, year of operation, then the management reserve funds will be used to hire professional management, thus relieving the adviser of his/her responsibilities.

Article V

OFFICERS

Section 5.01. *Officers.* The officers of the cooperative shall be a president, a vice president, a secretary, and a treasurer. The board may elect or appoint such other officers as it shall deem desirable, such officers to have the authority and perform the duties prescribed, from time to time, by the board. The offices of secretary and treasurer may be combined and held by one person.

Section 5.02. *Election and term of office.* (a) The officers of the cooperative specified in Section 5.01 shall be elected from the membership of the board by the board at its annual meeting or as soon thereafter as feasible. New officers may be created and filled at any meeting of the board. Each officer shall hold office until the next annual election of directors and until a successor shall have been duly elected and shall have qualified.

(b) The term of office shall be one year. Election of officers shall take place at the annual board meeting and shall be by ballot cast by qualified directors. A plurality of votes cast shall elect.

Section 5.03. *Removal.* Any officer elected or appointed by the board may be removed by the board by two-thirds vote of the remaining directors FmHA or its successor agency under Public Law 103-354 whenever, in its judgment, the best interests of the cooperative would be thereby served. Such removal shall be without prejudice to the membership rights, if any, of the officer so removed.

Section 5.04. *Vacancies.* A vacancy in any office because of death, resignation, removal, disqualification, or otherwise, may be filled by the board by majority vote for the unexpired portion of the term.

Section 5.05. *President.* The president shall be the principal executive officer of the cooperative and shall in general supervise and

control all the business and affairs of the cooperative. The president shall preside at all meetings of the members and of the board. The president may sign, with attestation of the secretary or any other proper officer of the cooperative authorized by the board, any deeds, mortgages, bonds, contracts, or other instruments which the board authorizes to be executed. In some cases the signing and execution thereof shall be expressly delegated by the board or these bylaws or statute to some other officers or agent of the corporation and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the board from time to time.

Section 5.06. *Vice President.* In the absence of the president or in the event of an inability or refusal to act, the vice president shall perform the duties of the president and, when so acting, shall have all the powers of and be subject to all the restrictions upon the president. Any vice president shall perform such other duties as from time to time may be assigned by the president of the board.

Section 5.07. *Secretary.* The secretary shall keep the minutes of the meeting of the members and the board in one or more books provided for that purpose, see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; be custodian of and see that the seal of the cooperative is affixed to all documents, the execution of which is on behalf of the cooperative under its seal, is duly authorized in accordance with the provisions of these bylaws; keep a register of the post office address of each member, which shall be furnished to the secretary and such other duties as from time to time may be assigned by the president of the board.

Section 5.08. *Treasurer.* The treasurer shall have charge and custody of and be responsible for all funds and securities of the cooperative; receive and give receipts for moneys due and payable to the cooperative, from any source whatsoever, deposit all such money in the name of the cooperative in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of Article VIII of these bylaws; and in general perform all duties incident to the office of treasurer and such other duties as from time to time be assigned by the president of the board.

Article VI

ORDER OF BUSINESS

Section 6.01. *Order of business.* The order of business at any regular or special meeting of the members or the board shall be:

- a. Roll Call.
- b. Proof of notice of meeting or waiver of notice.

- c. Reading and approving of any unapproved minutes.
- d. Reports of officers and committees.
- e. Election of inspectors of election (when applicable)
- f. Election of directors (when applicable).
- g. Unfinished business.
- h. New business.
- i. Adjournment.

If present, a representative of FmHA or its successor agency under Public Law 103-354 will be given an opportunity to address any regular or special meeting.

Section 6.02. *Parliamentary Procedure.* On questions of parliamentary procedure not covered in these bylaws, a ruling by the president shall prevail.

Article VII

COMMITTEES

Section 7.01. *Committees of directors.* The board of directors, by resolution adopted by majority of the directors in office, may designate one or more committees, each of which shall consist of one or more directors, which committees, to the extent provided in said resolution, shall have and exercise the authority of the board in the management of the cooperative; but the designation of such committees and the delegation thereto of authority shall not operate to relieve the board, or any individual director, of any responsibility imposed upon the board or any individual director by law.

Section 7.02. *Membership committees.* Other committees not having and exercising the authority of the board in the management of the cooperative will be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. At the first membership meeting the members will be solicited by the president to obtain voluntary commitments to serve on the various committees. As many members as possible should be encouraged to become involved in committee responsibilities. Any member may be removed from a committee by the president whenever in his/her judgment the best interest of the cooperative shall be served by such removal.

Section 7.03. *Term of office.* Each member of membership committees shall continue as such until the next annual meeting of the members of the cooperative when members may change from one committee to another. Additional members may join a committee at any time during the year.

Section 7.04. *Chairperson.* One member of each membership committee shall serve as chairperson by decision of the members of the committee. The chairperson will report committee activities and receive direction from a designated member of the board.

Section 7.05. *Vacancies.* Vacancies in the membership of any membership committee

may be filled in the same manner as provided in the case of the original members.

Section 7.06. *Quorum.* Unless otherwise provided in the resolution of the board of directors designating a committee, a majority of the whole membership committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

Section 7.07. *Rules.* Each membership committee may adopt rules for its own government not inconsistent with these bylaws or with rules adopted by the board of directors.

Article VIII

CONTRACTS, CHECKS, DEPOSITS, AND FUNDS

Section 8.01. *Deposits.* All funds of the cooperative shall be deposited from time to time to the credit of the cooperative in such Federally insured banks, trust companies, or other Federally insured depositories as board may select.

Section 8.02. *Gifts.* The board may accept on behalf of the cooperative any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the cooperative.

Article IX

CERTIFICATES OF MEMBERSHIP

Section 9.01. *Issuance of certificates.* When a person has been approved for membership and has paid any dues that may then be required, a certificate of membership shall be issued in his/her name and delivered to the member by the secretary.

Article X

Section 10.01. *Books and accounts.* The Treasurer of the cooperative shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, the board, and committees having any of the authority of the board of directors, and shall keep at the registered or principal office a record giving the names and addresses of the members. All books and records of the cooperative may be inspected by any member, or member's agent or attorney, or FmHA or its successor agency under Public Law 103-354 for any proper purposes at any reasonable time.

Section 10.02. *Auditing.* At the close of each fiscal year, the books and records of the cooperative shall be audited by a Certified Public Accountant or other person acceptable to FmHA or its successor agency under Public Law 103-354 whose report will be prepared and certified in accordance with the requirements of FmHA or its successor agency under Public Law 103-354. Based on such reports, the cooperative will furnish its members with an annual financial statement including the income and disbursements of

RHS, RBS, RUS, FSA, USDA

the cooperative. The cooperative will also supply the members, as soon as practicable after the end of each calendar year, with a statement showing the amount assigned to each member's patronage capital account.

Article XI

FISCAL YEAR

The fiscal year of the cooperative shall begin on the first day of January and end on the last day of December in each year, except that the first fiscal year of the cooperative shall begin at the date of incorporation.

Article XII

SEAL

The board shall provide a cooperative seal, which shall be in the form of a circle and shall have inscribed thereon the name of the cooperative and the words "Cooperative Seal." The seal will be kept by the secretary.

Article XIII

WAIVER OF NOTICE

Whenever any notice is required to be given under the provisions of the statutes of said State or the Articles of Incorporation or the Bylaws of the cooperative, a waiver thereof in writing signed by the person or persons entitled thereto, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Article XIV

REPEAL OF AMENDMENT OF BYLAWS

Section 14.01. *Repeal of amendment of bylaws.* These bylaws may be repealed or amended by a majority vote of the members present at any annual meeting of the members, or at any special meeting of the members called for such purpose, at which a quorum is present provided that while FmHA or its successor agency under Public Law 103-354 is mortgagee no amendment will become effective until it has received the FmHA or its successor agency under Public Law 103-354 written approval of FmHA or its successor agency under Public Law 103-354 and provided no such action shall change the purposes of the cooperative so as to impair its rights and powers under the laws of said State, or to waive any requirements of bond or any provision for the safety and security of the property and funds of the cooperative or its members, or to deprive any member without an express assent of rights, privileges or immunities then existing. Notice of any amendment to be offered at any meeting shall accompany the notice of any regular or

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special meeting at which proposed amendment is to be voted upon.

[56 FR 2248, Jan. 22, 1991]

EXHIBIT E TO SUBPART E OF PART 1944— SUPPORT SERVICES FOR CONGREGATE HOUSING AND GROUP HOMES

I. PURPOSE

This exhibit prescribes support services for congregate housing and group homes.

II. GENERAL

The success of congregate housing and group homes will depend on the quality and affordability of the service component. Congregate housing applicants should explore the feasibility of providing services individually to ensure affordability by very low-income tenants.

III. EXISTING COMMUNITY SERVICES AND REQUIREMENTS

Applicants should check local service agencies to determine what services are already available in the community. Services can often be provided more inexpensively through local service agencies or other groups which assist in providing services. In many communities there are established volunteer groups that may be willing to provide volunteer assistance to congregate housing tenants. Volunteer groups with a history of assisting elderly people may be able to supplement the delivery of services and help keep the costs affordable. Applicants should explore the availability of volunteers from the Retired Senior Volunteer Program (RSVP), local church groups and other community organizations. If volunteer groups are used, an alternative method of service delivery must be addressed in case the availability of volunteers ceases in the future. Applicants must also verify State and local licensing and certification requirements and include relevant information in the loan request.

IV. SERVICE AGREEMENTS

Applicant must submit a service agreement(s) for services that will not be provided by employees of the project. If services will be provided by employees of the project, the applicant must submit a separate budget for services and describe how tenants will be billed for services. Employees of congregate housing facilities who perform tasks for the management of the building and spend an appreciable amount of time in providing services to tenants should have their salaries prorated between the project's operation and maintenance budget and the services budget.

V. SERVICES FOR CONGREGATE HOUSING

The following services must be made available to tenants of congregate housing projects:

A. *Meals.* At least one nutritious meal a day, 7 days a week, must be provided in accordance with §1944.224(a)(5)(i) of this subpart. The following information concerning the meal service must be included with the loan request.

1. Who will provide the meals (i.e., meals offered by a local agency with tenant contribution; supplied or contracted for by owner with charge to tenant)?

2. If the service will be provided by employees of the project, a proposed breakdown of costs for the meal service. The breakdown should include the cost of food, personnel and utilities needed to prepare and serve the meals. Information concerning the proposed staffing should be included.

3. The cost to the tenant. Will tenants pay by the meal or be charged a rate for a specified time?

4. A statement concerning the frequency of meals, including the number of meals to be served per week.

5. Information concerning how the meals will be served (i.e., waiter style, buffet, tray service).

6. Any licensing requirement necessary for the service.

B. *Transportation.* Adequate transportation must be provided to shopping, medical and other services to meet the needs of the tenants. Applicants are encouraged to locate congregate housing facilities so that tenants can use public services. In many cases, service is available and the applicant can arrange for the project to be included in the schedule established by the provider. The following information concerning the transportation service must be included with the loan request:

1. Who will provide the service (i.e., transportation provided by a local agency with tenant contribution; vehicle leased or purchased by applicant with charge to tenant)?

2. If the service will be provided by employees of the project, a proposed breakdown of costs for the transportation service. The applicant should address the following costs: vehicle purchase or lease payment; personnel to operate the vehicle; fuel; maintenance; and insurance.

3. The cost to the tenant. Will tenants pay for each trip or will they be charged a monthly rate?

4. A typical proposed schedule.

C. *Housekeeping.* Housekeeping services must be offered to assist congregate tenants with household tasks. The applicant must address the following concerning the housekeeping service:

1. Who will provide the service (i.e., housekeeping offered by a local agency with ten-

ant contribution; supplied or contracted for by applicant with charge to tenant)?

2. If the service is provided by employees of the project, a proposed cost breakdown for the service which includes the cost of labor and supplies.

3. The type of tasks that will be offered (i.e., light housekeeping, laundry, shampooing carpeting). What is the planned frequency of the tasks?

4. The cost to the tenant.

D. *Personal services.* Personal services include such items as assistance with personal hygiene, nutrition counseling and general health screening (blood pressure checks, etc.). The following information concerning the personal services must be submitted with the loan request:

1. Who will provide the service (i.e., personal services offered by a local agency with tenant contribution; volunteer health services; contracted for by applicant with charge to tenant)?

2. If the service is provided by employees of the project, a proposed cost breakdown for the service which includes the cost of labor and supplies.

3. The type of tasks that will be provided.

4. The cost to the tenant.

5. Any licensing requirement necessary for the services.

E. *Recreational/social.* Recreational and social activities must be offered to tenants to encourage interest in a variety of areas. The following areas could be considered: hobby and craft classes; dinners for holidays, birthdays, etc.; educational lectures; wellness and exercise programs; and a library. The applicant should encourage recreational/social activities which cause interaction between tenants, the project and the community. The following information concerning the recreational/social service must be included with the loan request:

1. Who will provide the service (i.e., recreational/social activities offered by a local agency with tenant contribution; supplied or contracted for by applicant with charge to the tenant)?

2. If the service is provided by employees of the project, a proposed cost breakdown which includes the cost of labor and supplies.

3. The types and frequency of recreational/social activities that will be offered.

4. The cost to the tenant.

VI. SERVICES FOR GROUP HOMES

The following services must be made available to tenants of a group home:

A. *Meals.* At least three nutritious meals a day, 7 days a week, must be provided if tenants are not capable of preparing their meals. If meals are provided, the budget may include only the cost of food if tenants assist a staff person in preparing meals. Tenants in some group homes may be able to prepare meals on their own with supervision from a

project personnel. In these cases, applicants must ensure that the tenants will be preparing nutritious meals.

B. *Transportation.* Applicants must submit information on the transportation service as detailed in paragraph V B of this exhibit.

C. *Housekeeping.* Applicants must provide a narrative explaining how housekeeping will be accomplished. In many cases, group home tenants assist with housekeeping chores with little expense being borne by the project. Applicants should detail expenses that will be part of the service budget.

D. *Personal services.* A higher percentage of tenants in a group home may require personal services. Applicants must detail the services to be offered and the cost to tenants.

E. *Recreational/social.* In most cases, there will be little expense for recreational/social opportunities in a group home. Applicants should explain what will be offered to the tenants and the projected cost to tenants.

VII. ADDITIONAL ITEMS NECESSARY FOR CONGREGATE HOUSING/GROUP HOMES THAT CANNOT BE FINANCED WITH FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103-354 LOAN FUNDS

Congregate housing/group home projects require additional items that will not become affixed to the real estate. These items can include special portable equipment, furnishings, kitchen bars, dining ware, eating utensils, movable tables and chairs, steamtables, etc. In accordance with §1944.224(a)(3) of this subpart, loan funds cannot be used to finance these items. As a part of the loan request, applicants must include a proposed list of additional items that will be needed by the project and state how these items will be paid for.

[55 FR 26647, June 29, 1990, as amended at 58 FR 40954, July 30, 1993; 62 FR 25065, May 7, 1997]

EXHIBIT F TO SUBPART E OF PART 1944—
QUALIFICATIONS OF AN ADVISER TO
THE BOARD

Qualifications of an Adviser to the Board

In the Board's analysis of the talents and abilities of a person to handle the job of adviser, the first attribute most desirable is the capacity to be a friend. The definitions of a friend include (1) A person whom one knows, likes, and trusts; (2) one with whom one is allied in a struggle or cause; (3) one who supports, sympathizes with or patronizes a group, cause, or movement.

The adviser must care about the person he or she is trying to help. That means having patience and understanding during the trial and error period of a new cooperative's operation and also when it becomes necessary to explain complicated regulations or legal doc-

uments more than just once to those who have had less educational opportunities than the adviser.

The adviser must teach a totally new housing concept to persons who have only had experience with a rental environment. This means that the adviser must be able to talk to each and every person who is interested in the cooperative housing and explain just what the person is facing. The adviser must also be able to listen to those who rely on someone's "being there" to hear their problems and ideas. The adviser must be someone who is able to work with low-income persons and one who both understands their particular circumstances and strives to improve their well-being. The adviser, in this regard, must be able to learn as well as to teach.

The adviser must be dedicated to those persons with whom he or she is associated as well as to have the capacity to work with city officials, Government officials, politicians, and other professionals to achieve the goal of housing the local citizens.

I. EDUCATIONAL BACKGROUND

a. Experience in working with—

Low-income people and with the problems inherent with this group.

b. Administrative background for—

1. Setting up system for management, including detailed financial, personal, and activity records;

2. Setting up system for maintenance for buildings, grounds, and equipment.

c. Training to—

1. Accept the major responsibility of teaching and have the experience to carry this out.

2. Make certain that members are learning while doing, whatever the activity.

3. Know how to use group dynamics.

4. Be ready to assist individual members resolve problems.

5. Recognize a need for social casework when required, then be able to give or obtain that assistance. (Individual problems quickly affect cooperatives.)

6. Have knowledge of and make effective use of resources.

7. Handle the business of a cooperative while teaching members how to manage it themselves.

8. Understand complexity of management and maintenance.

9. Be able to understand, interpret, and teach the contents of documents from funding agencies.

Ideally, a background in social work would be the most logical experience, but others can be considered.

[56 FR 2252, Jan. 22, 1991]

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EXHIBIT F-1 TO SUBPART E OF PART 1944—RELATIONSHIP OF ADVISER TO MEMBERS

Relationship of Adviser to Members

I. The adviser must be able to teach the members and the members must be willing to learn management and maintenance of total Cooperative while they gradually assume more and more responsibilities, until the cooperative is completely self-managed.

II. In order to be effective, the adviser should have the ability to teach to members:

- a. The complete procedures and techniques of management and maintenance.
- b. A cooperative approach to everything involved while member lives in a cooperative.
- c. An ability to deal with persons in authority.
- d. Resources and how to use them.
- e. Board procedures and specific duties.
- f. Functions and responsibilities of Committees.
- g. Regulatory documents and their importance.
- h. Attitudes and procedures that will help member to:
 1. Learn while doing.
 2. Make payments on time.
 3. Develop a willingness to do his or her fair share of the work and the decision-making.
 4. Cultivate a concern for his or her neighbor.
 5. Consider the good of the group, ahead of self-interest.
 6. Use his or her vote and know it counts: within the cooperative for directors and officers of the board; outside for local, state, and national Government.
 7. Cooperate with board and committees.

III. The adviser must be able to help the people understand that there are rules which must be followed. The adviser must make certain that the members realize that, by signing their occupancy agreement, they are agreeing to live up to all aspects of that agreement. In so doing, they are agreeing to abide by all of the funding agency's regulations pertaining to the cooperative. These regulatory documents must be taught over and over and consulted by the members in all major decisions. The adviser would also be expected to:

- a. Work with families or individuals with specific problems.
- b. Consider each activity as an opportunity for the members to learn, learning while doing must be the members' primary goal.
- c. Become involved in the early planning stage of the cooperative.
- d. Involve members in decisionmaking during the planning stage, including the selection of living unit.

- e. Feel a part of the group of members and break down regulations and instructions into language understood by them.
- f. Give members the freedom and encouragement to express ideas and to carry out ideas accepted by the majority unless they are contrary to Government regulations.
- g. Interpret Government regulations and guidelines, being able to apply and teach them.

[56 FR 2252, Jan. 22, 1991]

EXHIBIT G TO SUBPART E OF PART 1944—ADVISER RESPONSIBILITIES

Adviser Responsibilities

I. Responsibilities of the adviser to the board will include—

- a. Serving as backup manager while teaching self-management and maintenance to the members.
- b. Assisting in organizing the board of directors and standing committees and meeting regularly with them.
- c. Assisting in continual evaluation and monitoring of operations.
- d. Developing an educational plan and being responsible for its implementation.
- e. Assisting in setting up systems and procedures for—
 1. Management, including detailed financial, personal, and activity records;
 2. Maintenance of buildings, grounds, and equipment.
- f. Assisting with financial questions that are not of sufficient complexity to require referral to an outside auditor.
- g. Advising in evaluation of new applicants for membership.

[56 FR 2252, Jan. 22, 1991]

EXHIBIT H TO SUBPART E OF PART 1944—LIMITED EQUITY AGREEMENT

Limited Equity Agreement

This Agreement, dated _____, by and between _____ (hereinafter "referred to as the "Cooperative"), a corporation having its principal office and place of business at _____ and Farmers Home Administration or its successor agency under Public Law 103-354, United States Department of Agriculture (hereinafter referred to as FmHA).

Witnesseth Whereas

The purpose of the cooperative is to own and operate cooperative housing on behalf of its members, and the cooperative has applied to FmHA or its successor agency under Public Law 103-354 for mortgage financing as authorized under Section 515 of the Housing Act of 1949, as amended.

The purpose of FmHA or its successor agency under Public Law 103-354 is to provide long term housing financing for very-low, low-, and moderate-income persons and households, although initially eligible cooperative members may remain in occupancy after exceeding the income limit established for moderate income.

The additional purpose of FmHA or its successor agency under Public Law 103-354 is to maintain the availability of units financed by FmHA or its successor agency under Public Law 103-354 for very-low, low-, and moderate-income persons for as long as possible up to the 30-year maximum life of the loan.

As a means for implementing and carrying out these purposes, the cooperative pledges to FmHA or its successor agency under Public Law 103-354 that:

(a) Equity accumulated by the cooperative, other than through the appreciation in value of real estate, furnishings, and equipment of the cooperative, will be assigned on the cooperative's books equally to members at the end of its fiscal year and in accordance with the IRS ruling concerning patronage capital.

(b) The members will be notified, in writing, of the amount assigned to his or her patronage account each year after the assignment has been made.

(c) The officers, board of directors, and members of the cooperative may not act to dissolve the cooperative for the purpose of distributing equity, or for other reasons, except as necessary due to default or other circumstances beyond the cooperative's control, and

(d) Should it become necessary to dissolve the cooperative, all property and assets of the cooperative will be transferred to another nonprofit or such other municipal organization and be maintained for the same purposes for which it was started.

(e) Only membership fees and money accrued in the member's patronage capital accounts will be distributed to the members and represents the entire equity payment to which the members are entitled. The cooperative reserves the right to withdraw from the equity payment or membership fee any amount due the cooperative through member's delinquency in payment of occupancy charge or through damage to the premises.

In witness thereof, the parties hereto have caused this agreement to be signed and sealed the day and year first above written.

(Cooperative)

(Witness)

By: _____ (Seal)
(Member)

This agreement will be filed with the member's record.

[56 FR 2252, Jan. 22, 1991, as amended at 62 FR 67224, Dec. 23, 1997]

EXHIBIT I TO SUBPART E OF PART 1944— SUBSCRIPTION AGREEMENT

Subscription Agreement

Dwelling Unit No. _____

Date _____

1. Subscription Amount:

(a) I/We _____, a legal resident(s) of _____, hereinafter called "Subscriber," hereby subscribe for membership in _____, a cooperative housing corporation hereinafter called the "Cooperative," and hereby subscribe to a Membership Certificate in said Cooperative having a par value of \$ _____.

(b) Subscriber hereby agrees to pay for the Membership Certificate, also referred to as Membership Fee, as follows:

(1) \$ _____ upon signing this Agreement.

(2) \$ _____ in monthly payments of _____ payable over _____ consecutive months (not to exceed 12 months).

2. *Ratification of Other Provisions.* Subscriber has read and agrees to be bound by all provisions of the articles of incorporation, bylaws, and occupancy agreement, copies of which are attached hereto and receipt of which is hereby acknowledged, and agrees to be bound by requirements of the Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 as long as it remains mortgagee.

3. *Priority of mortgage lien.* This agreement and all rights hereunder are and at all times shall be subject and subordinate to the lien of the mortgage and accompanying documents to be executed by the Cooperative to FmHA or its successor agency under Public Law 103-354 and to any and all modifications, extensions, and renewals thereof; and to any mortgage or deed of trust which may at any time hereafter be placed on the property of the Cooperative or any part thereof.

4. *Occupancy agreement.* Subscriber, if approved for membership, will be entitled to occupancy of the above numbered dwelling unit under provisions of the above-mentioned occupancy agreement. Estimated initial charge per month for said unit will be established prior to signing the occupancy agreement. Future charges will be based on family income, as provided for in the occupancy agreement. I/We agree to execute the occupancy agreement on demand and to comply with all the terms thereof.

5. *Cancellation rights.* (a) The Cooperative reserves the right at any time before it has notified the Subscriber of his/her acceptability for membership, for reasons deemed

sufficient by the Cooperative, and approved by FmHA or its successor agency under Public Law 103-354, to return the amount paid by the Subscriber under this Agreement. In the event the Subscriber shall have died prior to becoming a member, the Cooperative reserves the right to return the amount paid by the Subscriber under this Agreement to the Subscriber's estate or legal representative, and thereupon all rights of the Subscriber shall cease and terminate without further liability on the part of the Cooperative.

(b) It is understood that the Subscriber's credit is subject to approval by FmHA or its successor agency under Public Law 103-354, and that said Subscriber's total household income must not exceed any limitations for initial occupancy established by FmHA or its successor agency under Public Law 103-354. In the event FmHA or its successor agency under Public Law 103-354 determines that the Subscriber does not meet FmHA or its successor agency under Public Law 103-354 credit, income limitation, or other eligibility requirements for participation in this project, the Cooperative shall return to Subscriber the sums paid hereunder. In the event FmHA or its successor agency under Public Law 103-354 determines that the necessary loan to finance the Cooperative housing project cannot be made or insured by FmHA or its successor agency under Public Law 103-354, or the Cooperative withdraws its application for such loan, the Cooperative shall return to Subscriber all sums paid by Subscriber hereunder. Upon either determination by FmHA or its successor agency under Public Law 103-354 and the return of the sums to Subscriber as provided in this paragraph (b), this agreement shall become null and void and all rights and liabilities hereunder of the parties shall cease and terminate.

(c) If the Subscriber within five (5) days after the execution of this subscription agreement, notifies the Cooperative in writing that he wishes to withdraw from the agreement, the amounts paid by the Subscriber under this agreement will be returned to the Subscriber and thereupon all rights and liabilities of the Subscriber hereunder shall cease and terminate. If, at the end of the five-day period, the Subscriber has not exercised this right to withdraw, the right will be terminated. If FmHA or its successor agency under Public Law 103-354 determines that membership has not been achieved to the extent required by FmHA or its successor agency under Public Law 103-354, the Subscriber will again have the right to withdraw within a five-day period.

(d) If the Subscriber defaults in any obligation under this Agreement, and such default continues for fifteen (15) days after notice sent by registered mail by the Cooperative to the Subscriber at the address given below,

then at the option of the Cooperative, the Subscriber shall lose any and all rights under this agreement. Any amount paid toward this subscription price at the option of the Cooperative may be retained by the Cooperative as liquidated damages or be returned, less the Subscriber's proportionate share of expenses incurred by the Cooperative as determined solely by the Cooperative. The Cooperative may, at its option, release the obligations of the Subscriber under this agreement in the event the Subscriber secures an assignee of this agreement who assumes the obligations herein contained and is satisfactory to the Cooperative and FmHA or its successor agency under Public Law 103-354 while mortgagee. This Agreement is not otherwise assignable.

6. *Oral Representation Not to be Relied Upon.* This agreement will supersede any prior understandings and agreements and constitutes the entire agreement between the Subscriber and the Cooperative, and no oral representation or statements shall be considered a part hereof.

Witness:

Subscriber

Subscriber

Address

Telephone

[56 FR 2253, Jan. 22, 1991]

EXHIBIT J TO SUBPART E OF PART 1944— OCCUPANCY AGREEMENT

Occupancy Agreement

This Agreement, dated _____, by and between _____ (hereinafter referred to as the "Cooperative"), at _____ and _____ (hereinafter referred to as "Member").

Witnesseth: Whereas:

The purpose of the Cooperative is to acquire, own, and operate a cooperative housing project and its members shall have the right to occupy its dwelling units under the terms and conditions set forth in this agreement:

Member is the owner and holder of a certificate of membership of the Cooperative and intends to occupy a dwelling unit in the project as permanent residence; and

Member has certified to the accuracy of the statements in Member's application and agrees and understands that household income and other eligibility requirements are substantial and material requirements of his initial and continuing occupancy.

To Have and To Hold dwelling unit Number _____ on the terms and conditions set forth in this agreement, in the corporate charter, bylaws, and any other rules and regulations of the Cooperative. The term of this agreement shall be for a three-year period ending on _____, 19 ____,¹ renewable for successive three-year periods under the conditions provided for in this Agreement.

ARTICLE 1. OCCUPANCY CHARGES

Section 1.01. Commencing at the time indicated in ARTICLE 2, the Member agrees to pay to the Cooperative a monthly sum referred to as the "Occupancy Charge." This amount will be equal to one-twelfth of the Member's proportionate share of the total amount required by the Cooperative, as estimated by its board of directors, to meet its annual expenses and the requirements of the FmHA or its successor agency under Public Law 103-354 loan. These include but are not limited to, the following items:

- (a) Project operating expenses and cost of services furnished.
- (b) Necessary management reserve and administrative costs.
- (c) Taxes and assessments levied against the project or the Cooperative which it is required to pay.
- (d) Fire and extended coverage insurance on the project and any other insurance which the Cooperative may require.
- (e) The cost of furnishing any water, electricity, heat, gas, garbage and trash collection, and other utilities, if furnished by the Cooperative.
- (f) Payments to other reserves set up by the board of directors.
- (g) Estimated costs of repairs, maintenance, and replacements of project property to be made by the Cooperative.
- (h) The amount of principal, interest, and any other required payments on any indebtedness of the Cooperative, including any loan made or insured by the Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354, United States Department of Agriculture.
- (i) Any other expenses of the Cooperative approved by the board of directors and by FmHA or its successor agency under Public Law 103-354, while mortgagee, including operating deficiencies, if any, for prior periods.

Section 1.02. The board of directors shall determine the amount of the occupancy charges annually, but may do so at more frequent intervals should circumstances so require. No Member shall be charged with

more than the appropriate share determined by the board of directors. That amount of the occupancy charge required for payment on the principal of mortgage of the Cooperative or any other capital expenditures shall be credited upon the books of the Cooperative as a capital contribution by the Members. Until further notice from the Cooperative, the monthly charge for the above-mentioned dwelling unit shall be \$_____.

ARTICLE 2. WHEN PAYMENT OF OCCUPANCY CHARGES TO COMMENCE

Section 2.01. After thirty days' notice by the Cooperative that the dwelling unit is available for occupancy, or upon acceptance of occupancy, whichever is earlier, Member shall make a payment for occupancy charge covering the unexpired balance of the month. Thereafter, Member shall pay occupancy charge in advance on the first day of each month. Dates of payments may be changed by mutual agreement of the Cooperative and FmHA or its successor agency under Public Law 103-354.

Section 2.02. The Member agrees to furnish to the Cooperative, each year, a certificate of income on which the Member's occupancy charge will be determined.

ARTICLE 3. PATRONAGE REFUNDS

Section 3.01. The Board shall, on the books of the Cooperative, assign to Member in accordance with the IRS ruling concerning patronage capital, a proportionate share of money collected in excess of the amount needed for Cooperative expenses, including reserves designated as management reserve, and Members will be notified of the amount assigned each year.

ARTICLE 4. MEMBER'S OPTION TO RENEW

Section 4.01. It is agreed that the term of occupancy shall be renewed for further periods of three years from the expiration of the initial term (or for the term mutually agreed to by the member and the Cooperative). Such renewals shall be based upon the same agreements as contained in this agreement unless: (1) Notice of Member's decision not to renew is given to the Cooperative in writing at least 4 months prior to expiration of the current terms, and (2) Member, before expiration of said term, shall (a) endorse membership certificate for transfer to Cooperative and deposits same with the Cooperative, (b) meet all obligations and pay all amounts due under this Agreement before said expiration, and (c) vacate and leave the premises in good state of repair. Upon compliance with foregoing provisions (1) and (2), Member shall have no further liability under this agreement. If extenuating circumstances warrant, the Member's four-month notification of intention to vacate may be modified appropriately. The Member will be entitled to the

¹The termination date to be inserted should be three years from the date of the occupancy agreement. (These terms may be for periods longer than 3 years if mutually agreeable to the member and to the cooperative.)

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patronage capital which has accrued and been assigned during the term of this agreement provided that provisions (1) and (2) have been met.

**ARTICLE 5. PREMISES TO BE USED FOR
RESIDENTIAL PURPOSES ONLY**

Section 5.01. Member shall occupy the dwelling unit covered by this agreement as a private dwelling unit for the Member and/or immediate household and for no other purpose. The Member shall have use of all common community property and facilities of the project so long as Member continues to own a membership certificate of the Cooperative, occupies the assigned dwelling unit, and abides by the terms of this Agreement. Any sublessee of the Member, if approved pursuant of Article 7 hereof, may enjoy the rights to which Member is entitled under this Article 5, except that the sublessee will have no voting rights in the affairs of the Cooperative.

Section 5.02. Member shall not permit or suffer anything to be done or be kept upon said premises which will increase the rate of insurance on the building, or on its contents. Member will not obstruct or interfere with the rights of other occupants, or annoy them by unreasonable noises or otherwise permit any nuisance on the premises, or allow any illegal act to be committed. Member shall comply with all the requirements of the Board of Health and of all other governmental authorities with respect to the said premises. If, by reason of the occupancy or use of these premises by Member, the rate of insurance on the building is increased, Member shall become personally liable for the additional insurance premiums.

**ARTICLE 6. MEMBER'S RIGHT TO PEACEABLE
POSSESSION**

Section 6.01. In return for Member's continued fulfillment of the terms and conditions of this agreement, the Cooperative agrees that the Member may at all times while this agreement remains in effect, have and enjoy for the Member's sole use and benefit the dwelling unit and community facilities hereinabove described.

**ARTICLE 7. NO SUBLETTING WITHOUT CONSENT
OF CORPORATION**

Section 7.01. This agreement shall not be assigned nor Member's dwelling unit sublet without the written consent of the Cooperative and FmHA or its successor agency under Public Law 103-354, while mortgagee. Under this agreement the Member shall be liable for the conduct of the sublessee. Any unauthorized subleasing shall, at the option of the cooperative and of FmHA or its successor agency under Public Law 103-354, while mortgagee, result in termination and

forfeiture of Member's rights under this occupancy agreement.

ARTICLE 8. TRANSFERS

Section 8.01. Neither this agreement nor Member's right of occupancy shall be transferrable or assignable except as provided in the bylaws of the Cooperative for the transfer of membership.

**ARTICLE 9. MANAGEMENT, TAXES, AND
INSURANCE**

Section 9.01. The Cooperative shall provide necessary management, operation, and administration of the project; pay or provide for the payment of all taxes or assessments levied against the project; procure and pay or provide for the payment of fire insurance and extended coverage, and other insurance as the Cooperative may deem advisable on property in the project. The Cooperative will not, however, provide insurance on Member's personal property.

ARTICLE 10. UTILITIES

Section 10.01. The Cooperative shall arrange for utilities (water, electricity, heat, and gas) for common areas of the structure(s) in amounts which it deems reasonable and in conformance with exhibit A-6 to subpart E of part 1944 (Strike out any of the foregoing items in this Article which are not applicable.) Each unit will be separately metered and Member shall pay directly to the supplier for the utilities billed to Member.

ARTICLE 11. REPAIRS

Section 11.01. By Member. Member agrees to repair and maintain Member's dwelling unit at own expense as follows:

(a) Any repairs or maintenance necessitated by Members's own negligence or misuse;

(b) Any redecoration of own dwelling unit authorized, done or contracted for by Member;

(c) Any repairs, maintenance, or replacements required on the following items: (Insert the items desired, subject to FmHA or its successor agency under Public Law 103-354 approval.)

Section 11.02. By cooperative. The Cooperative shall provide and pay for all necessary repairs, maintenance, and replacements except as specified in §11.01. Member agrees to the right of the officers of the Cooperative to authorize entrance to Member's dwelling unit in order to complete necessary repairs, maintenance, and replacements and to authorize entrance for such purposes by employees of any contractor, utility company, municipal agency, or others at any reasonable hour of the day, and upon reasonable notice. In the event of emergency, the unit may be entered at any time. Notification of

entry will be left for the member by the person performing the maintenance or repair.

Section 11.03. Right of cooperative to make repairs at member's expense. In case Member shall fail to effect and pay for the repairs, maintenance, or replacement specified in §11.01, in a manner satisfactory to the Cooperative, the board may do so and add the cost of repairs to Member's next month's occupancy charge payment.

ARTICLE 12. ALTERATIONS AND ADDITIONS

Section 12.01. The Member shall not, without the written consent of the Cooperative make any structural alterations in the premises or in the water, gas or steam pipes, electrical conduits, plumbing or other fixtures connected therewith, or remove any additions, improvements, or fixtures from the premises.

Section 12.02. If Member for any reason ceases to be an occupant of the premises, Member shall surrender to the Cooperative possession thereof, including any alterations, additions, fixtures, and improvements.

Section 12.03. Member shall not, without the prior written consent of the Cooperative install or use in dwelling unit any air conditioning equipment, electric heater, or power tools. Member agrees that the Cooperative or FmHA or its successor agency under Public Law 103-354, while mortgagee, may require the prompt removal of any such equipment at any time, and that failure to remove such equipment upon request shall constitute a default within the meaning of Article 13 of this agreement.

ARTICLE 13. DEFINITION OF DEFAULT BY MEMBER AND EFFECT THEREOF

Section 13.01. If, at any time after the happening of any event specified in clauses (a) through (k), below, the Cooperative gives to Member a 30-day notice of expiration, this agreement and all Member's rights under this agreement will expire on the date specified in such notice. In the meantime the default may be cured in a manner deemed satisfactory by the Cooperative. After 10 days following such expiration of Member's rights, the Cooperative may reenter the dwelling unit and remove all persons and personal property therefrom, by any means available to it by law, and may repossess the dwelling unit in its former state as if this agreement had not been made.

(a) If, during the term of this agreement, Member ceases to be the owner and legal holder of a membership of the Cooperative.

(b) If Member attempts to transfer or assign this agreement in a manner inconsistent with the provisions of the bylaws.

(c) If, during continuance of this agreement, Member is declared bankrupt under the laws of the United States so as to be re-

leased from any debt or obligation to the Cooperative or to interfere with his full exercise of his rights as Member and occupant.

(d) If, during continuance of this agreement, a receiver of Member's property is appointed under the laws of the United States or of any State.

(e) If, during continuance of this agreement, Member shall make a general assignment for the benefit of creditors.

(f) If, during continuance of this agreement, any of the membership rights in the Cooperative owned by Member are duly levied upon and sold under the process of any court.

(g) If Member fails to effect and/or pay for repairs and maintenance as provided for in Article 11.

(h) If Member fails to pay any sum due pursuant to Article 1.

(i) If default occurs with respect to any obligation of Member under this agreement.

(j) If, during the term of this agreement, Member fails to comply promptly with all requests by the Cooperative for information and certifications concerning the total current income of Member and Member's household or any other eligibility requirements for membership or occupancy.

(k) If, during the term of this agreement, limitations for continued occupancy are established from time to time by the FmHA or its successor agency under Public Law 103-354 and are exceeded.

Section 13.02. Member hereby expressly waives any and all right to reenter the dwelling if the eviction is by judgment of any court or judge. The words *enter*, *reenter*, or *reentry* as used in this agreement are not restricted to their technical legal meaning. In the event of a breach by Member of the terms of this agreement, the Cooperative shall have the right of injunction and the right to invoke any remedy allowed at law or in equity, as if reentry, summary proceedings, and other remedies were not provided for.

Section 13.03. Failure by the Cooperative to avail itself of any remedy given under this agreement shall not waive or destroy any right of the Cooperative to avail itself of remedies for any similar or other breach or default by Member.

Section 13.04. Notice by the Cooperative under any of the conditions described in section 13 shall be in writing. The cooperative shall not evict any member except by judicial action pursuant to State or local law and in accordance with the requirements of subpart C of part 1930 of this chapter.

ARTICLE 14. MEMBER TO COMPLY WITH ALL CORPORATE REGULATIONS

Section 14.01. Member agrees to preserve and promote the cooperative ownership principles on which the Cooperative has been founded and to abide by the charter, bylaws,

rules and regulations of the Cooperative, and amendments. The Member agrees to make diligent effort in performing duties and accepting responsibilities either through volunteering or by assignment from the board of directors. By acts of cooperation with other members, Member will strive to bring about and maintain a high standard in home and community conditions. The Cooperative agrees to deliver to Member its rules and regulations and/or to distribute them in such other manner as to constitute adequate notice.

ARTICLE 15. EFFECT OF FIRE LOSS ON
INTERESTS OF MEMBER

Section 15.01. In the event of loss or damage by fire or other casualty to Member's dwelling unit without fault or negligence of Member, the Cooperative shall determine (1) Whether to restore the damaged premises and, if not to restore (2) the amount to be paid to Member to redeem membership and for reimbursement for any loss sustained by the Member.

Section 15.02. If, under such circumstances, the Cooperative decides to restore the premises, occupancy charges shall stop wholly or partially, as determined by the Cooperative, until the premises have been restored. If, on the other hand, the cooperative decides not to restore the premises, the occupancy charges shall cease from the date of such loss or damage.

ARTICLE 16. INSPECTION OF DWELLING UNIT

Section 16.01. Member agrees that the representatives of any mortgage holding a mortgage on the property of the Cooperative, the officers of the Cooperative, or authorized representative of the Cooperative shall have the right to enter the dwelling unit of Member and make inspections and, with the approval of the Cooperative, the employees of any contractor, utility company, municipal agency, or others shall have the right to enter the dwelling unit of Member and make inspections at any reasonable hour of the day, upon reasonable notice, and at any time in the event of emergency.

ARTICLE 17. SUBORDINATION CLAUSE

Section 17.01. The Cooperative housing project of which Member's dwelling unit is a part is planned to be constructed by the Cooperative with the assistance of a loan to the Cooperative made or insured by the FmHA or its successor agency under Public Law 103-354. Therefore, this agreement and all rights, privileges, and benefits hereunder shall be at all times subject and subordinate to a first mortgage lien or any documents executed by the Cooperative to secure its obligations to FmHA or its successor agency under Public Law 103-354 and to any extensions and removals and to any security in-

strument which may be made in replacement thereof or at any time hereafter be placed on the property of the corporation. Member hereby agrees to execute, at the Cooperative's request and expense, any instrument which the Cooperative or any lender or mortgagee may deem necessary or desirable to subordinate this Agreement to any such security instrument. Member hereby appoints the Cooperative and each and every officer thereof, and any future officer, as irrevocable attorney-in-fact during the term of the agreement to execute any such instrument on behalf of Member.

ARTICLE 18. LATE CHARGES AND OTHER COSTS
IN CASE OF DEFAULT

Section 18.01. In addition to all other sums due or to become due under this agreement, Member shall pay to the Cooperative a late charge, not to exceed \$10.00, at any time payment of occupancy charges, or part thereof, is more than 10 days late. This late fee may be waived, depending on the circumstances and at the discretion of the board.

Section 18.02. If, because of default by Member under any obligation in this agreement, the Cooperative obtains the services of an attorney, Member shall pay to the Cooperative all costs and fees involved, including reasonable attorney's fees and the costs of any resulting law suit, if such an action becomes necessary.

ARTICLE 19. NOTICES

Section 19.01. Whenever any bylaw of Cooperative, any law, or this agreement requires notice to be given to either party, any notice or demand by the Cooperative to Member shall be considered to have been duly given if the same is delivered to Member at Member's unit or to Member's last known address. Any notice or demand by Member to the Cooperative shall be considered to have been duly given if delivered to an officer of the Cooperative. Such notice may also be given by depositing same in the United States mails addressed to Member as shown on the books of the Cooperative, or to the president of the cooperative, as the case may be, and the time of mailing shall be the time of giving such notice.

ARTICLE 20. ORAL REPRESENTATION NOT
BINDING

Section 20.01. No representation other than those contained in this Agreement and in the charter and the bylaws of the Cooperative shall be binding upon the Cooperative.

In Witness Whereof, the parties hereto have caused this agreement to be signed and sealed the day and year first above written.

Cooperative
By: _____ (Seal)

Member
To Be Duly Acknowledged
[56 FR 2253, Jan. 22, 1991]

Subpart F—Congregate Housing Services Program

SOURCE: 61 FR 42943, 42949, Aug. 19, 1996, unless otherwise noted.

§ 1944.251 Purpose.

The requirements of this subpart augment the requirements of section 802 of the National Affordable Housing Act of 1990 (approved November 28, 1990, Public Law 101-625) (42 U.S.C. 8011), (hereinafter, section 802), as amended by the Housing and Community Development Act of 1992 (Public Law 102-550, approved October 28, 1992), which authorizes the Congregate Housing Services Program (hereinafter, CHSP or Program).

§ 1944.252 Definitions.

In addition to the definitions in section 802(k), the following definitions apply to CHSP:

Activity of Daily Living (ADL) means an activity regularly necessary for personal care.

(1) The minimum requirements of ADLs include:

(i) Eating (may need assistance with cooking, preparing or serving food, but must be able to feed self);

(ii) Dressing (must be able to dress self, but may need occasional assistance);

(iii) Bathing (may need assistance in getting in and out of the shower or tub, but must be able to wash self);

(iv) Grooming (may need assistance in washing hair, but must be able to take care of personal appearance);

(v) Getting in and out of bed and chairs, walking, going outdoors, using the toilet; and

(vi) Household management activities (may need assistance in doing housework, grocery shopping or laundry, or getting to and from one location to another for activities such as going to the doctor and shopping, but must be mobile. The mobility requirement does not exclude persons in

wheelchairs or those requiring mobility devices.)

(2) Each of the Activities of Daily Living noted in paragraph (1) of this definition includes a requirement that a person must be able to perform at a specified minimal level (e.g., to satisfy the eating ADL, the person must be able to feed himself or herself). The determination of whether a person meets this minimal level of performance must include consideration of those services that will be performed by a person's spouse, relatives or other attendants to be provided by the individual. For example, if a person requires assistance with cooking, preparing or serving food plus assistance in feeding himself or herself, the individual would meet the minimal performance level and thus satisfy the eating ADL, if a spouse, relative or attendant provides assistance with feeding the person. Should such assistance become unavailable at any time, the owner is not obligated at any time to provide individualized services beyond those offered to the resident population in general. The Activities of Daily Living analysis is relevant only with regard to determination of a person's eligibility to receive *supportive services* paid for by CHSP and is not a determination of eligibility for occupancy;

Adjusted income means adjusted income as defined in 24 CFR parts 813 or 913.

Applicant means a State, Indian tribe, unit of general local government, public housing authority (PHA), Indian housing authority (IHA) or local nonprofit housing sponsor. A State, Indian tribe, or unit of general local government may apply on behalf of a local nonprofit housing sponsor or a for-profit owner of eligible housing for the elderly.

Area agency on aging means the single agency designated by the State Agency on Aging to administer the program described in Title III of the Older Americans Act of 1965 (45 CFR chapter 13).

Assistant Secretary means the HUD Assistant Secretary for Housing-Federal Housing Commissioner or the HUD Assistant Secretary for Public and Indian Housing.